

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

Harry G. Beyoglides, Jr.,
Special Administrator of the
Estate of Robert Andrew
Richardson, Sr., Deceased,
Plaintiff,

vs.

Case No. 3:14-CV-00158

Phil Plummer/Montgomery County
Sheriff, et al.,
Defendants

- - -

DEPOSITION OF TED JACKSON

the Defendant herein, called by the Plaintiff under the
applicable Rules of Civil Procedure, taken before me,
Whitney Layne, a Notary Public for the State of Ohio, at
the law firm of Dinkler & Pregon, 5335 Far Hills Avenue,
Suite 117, Dayton, Ohio 45429 on November 18, 2015 at
8:00 a.m.

LAYNE & ASSOCIATES
6723 COOPERSTONE DRIVE
DUBLIN, OHIO 43017
614-309-1669

<p>1 APPEARANCES</p> <p>2</p> <p>3 NICHOLAS DICELLO, ESQUIRE</p> <p>4 SPANGENBERG, SHIBLEY & LIBER</p> <p>5 1001 Lakeside Avenue</p> <p>6 Suite 1700</p> <p>7 Cleveland, Ohio 44114</p> <p>8 on behalf of the Plaintiff</p> <p>9</p> <p>10 JAMEY PREGON, ESQUIRE</p> <p>11 DINKLER & PREGON</p> <p>12 5335 Far Hills Avenue</p> <p>13 Suite 123</p> <p>14 Dayton, Ohio 45429</p> <p>15 on behalf of the Sheriff Defendants</p> <p>16</p> <p>17 CARRIE STARTS, ESQUIRE</p> <p>18 REMINGER CO., LPA</p> <p>19 525 Vine Street</p> <p>20 Suite 1700</p> <p>21 Cincinnati, Ohio 45202</p> <p>22 on behalf of the Defendants</p> <p>23 NaphCare, Inc., Nurse Felicia Foster,</p> <p>24 Nurse Jon Boehringer, Nurse Krisandra</p> <p>Miles, Medic Steven Stockhauser,</p> <p>and Brenda Garrett Ellis, M.D.</p> <p>ANNE M. JAGIELSKI, ESQUIRE</p> <p>ASSISTANT PROSECUTING ATTORNEY</p> <p>301 West Third Street</p> <p>4th Floor</p> <p>Dayton, Ohio 45422</p> <p>on behalf of the Defendant</p> <p>Montgomery County Sheriff's</p> <p>Office</p> <p>Page 2</p>	<p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 TED JACKSON</p> <p>4 BY MR. DICELLO.....Page 5</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Page 4</p>
<p>1 November 18, 2015</p> <p>2 Wednesday Session</p> <p>3 8:00 a.m.</p> <p>4 - - -</p> <p>5 STIPULATIONS</p> <p>6</p> <p>7 It is stipulated by and among counsel for the</p> <p>8 respective parties that the deposition of TED JACKSON, the</p> <p>9 Defendant herein, called by the Plaintiff under the</p> <p>10 applicable Rules of Civil Procedure, may be taken at this</p> <p>11 time by the notary Whitney Layne; that said deposition may</p> <p>12 be reduced to writing in stenotypy by the notary, whose</p> <p>13 notes thereafter may be transcribed out of the presence of</p> <p>14 the witness; and that the proof of the official character</p> <p>15 and qualification of the notary is waived.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Page 3</p>	<p>1 TED JACKSON</p> <p>2 Being first duly sworn, as hereinafter</p> <p>3 certified, deposes and says as follows:</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. DICELLO:</p> <p>6 Q Good morning.</p> <p>7 A Good morning.</p> <p>8 Q Can you please state your name for the record</p> <p>9 and spell your last name for the court reporter?</p> <p>10 A Ted L. Jackson, J-A-C-K-S-O-N.</p> <p>11 Q Sergeant Jackson, my name is Nick DiCello.</p> <p>12 We've had a chance to meet off the record. You understand</p> <p>13 you're here to have your deposition taken today?</p> <p>14 A That's correct.</p> <p>15 Q You probably realize, but I represent the</p> <p>16 estate and the family of Robert Richardson. He passed</p> <p>17 away in the Montgomery County Jail back in 2012. Do you</p> <p>18 understand you're here to have your deposition taken in</p> <p>19 connection with a lawsuit that's been filed against the</p> <p>20 county sheriff and a number of sheriff's deputies?</p> <p>21 A I understand.</p> <p>22 Q Have you ever been deposed before?</p> <p>23 A I have.</p> <p>24 Q When was the last time you sat for a</p> <p>Page 5</p>

<p>1 deposition?</p> <p>2 A Possibly, I'm not exactly sure, 2002, maybe.</p> <p>3 Q Was that in connection with a civil lawsuit?</p> <p>4 A Yes.</p> <p>5 Q And did it involve a claim being made by an</p> <p>6 inmate or detainee against the county sheriff?</p> <p>7 A No.</p> <p>8 Q Were you a party to the lawsuit or were you a</p> <p>9 witness?</p> <p>10 A I was a party to the lawsuit.</p> <p>11 Q What kind of civil case was it?</p> <p>12 A It was in relation to a traffic accident in</p> <p>13 relation to a pursuit.</p> <p>14 Q Were you named as a defendant in the case or</p> <p>15 were you a plaintiff?</p> <p>16 A I was a --</p> <p>17 Q Were you suing or were you being sued?</p> <p>18 A I was being sued, yes.</p> <p>19 Q That would be a defendant.</p> <p>20 A Okay.</p> <p>21 Q Did that case go to trial, do you know, or was</p> <p>22 it resolved before trial?</p> <p>23 A I would say a portion of it. Because there was</p> <p>24 -- I was in conjunction with or part of the sheriff's</p> <p style="text-align: right;">Page 6</p>	<p>1 that?</p> <p>2 A In excess of a hundred probably.</p> <p>3 Q So I think you probably understand the basic</p> <p>4 rules of a deposition, but let me just put a couple on the</p> <p>5 record so we have understanding. Whitney is taking</p> <p>6 everything that we say down, so it's important that we not</p> <p>7 speak over one another, okay?</p> <p>8 A Yes.</p> <p>9 Q All your answers have to be verbal; words, yes,</p> <p>10 no, instead of nods and shrugs, uh-huhs and huh-uhs, that</p> <p>11 kind of thing.</p> <p>12 A I understand.</p> <p>13 Q I only want you to answer questions that you</p> <p>14 understand today. So if I ask a question that you don't</p> <p>15 understand, which can happen, I want you to tell me that,</p> <p>16 okay?</p> <p>17 A Okay.</p> <p>18 Q Given that understanding that we have, if I ask</p> <p>19 you a question and you answer it, on the record, I'm going</p> <p>20 to assume you understood the question. Is that fair?</p> <p>21 A That is fair.</p> <p>22 Q If you want to take a break at any time for any</p> <p>23 reason, sometimes these things are very quick, sometimes</p> <p>24 they take a long time, we can do that. I would just ask</p> <p style="text-align: right;">Page 8</p>
<p>1 office in conjunction with insurance companies.</p> <p>2 Q Yeah.</p> <p>3 A So I -- they had a trial portion of it against</p> <p>4 an insurance company. I then became a witness.</p> <p>5 Q I understand.</p> <p>6 A If, you know, they --</p> <p>7 Q That makes sense.</p> <p>8 A They kind of released me off of it and then</p> <p>9 refiled. So at one point I became a witness for, you</p> <p>10 know, for the plaintiff against the insurance company.</p> <p>11 Q Right. The coverage issues that probably were</p> <p>12 involved?</p> <p>13 A Yes.</p> <p>14 Q So did you testify in court --</p> <p>15 A Yes.</p> <p>16 Q -- in that case? All right.</p> <p>17 A Yeah. Only on -- only as a witness.</p> <p>18 Q Understood.</p> <p>19 A In that perspective.</p> <p>20 Q I assume, but you tell me, in connection with</p> <p>21 your official duties that you've testified in court</p> <p>22 before?</p> <p>23 A Yes.</p> <p>24 Q How many times do you think you might have done</p> <p style="text-align: right;">Page 7</p>	<p>1 if a question is pending, please answer the question and</p> <p>2 then say, "Hey, Nick, let's take a break," okay?</p> <p>3 A Okay.</p> <p>4 Q You understand you're under oath today?</p> <p>5 A I do understand.</p> <p>6 Q And that's the same kind of oath you understand</p> <p>7 that you've taken when you're in a court of law in front</p> <p>8 of a jury; correct?</p> <p>9 A That is correct. I do understand that.</p> <p>10 Q And you understand that I'm going to be relying</p> <p>11 on the accuracy of your answers that you give me today in</p> <p>12 connection with this lawsuit?</p> <p>13 A Yes.</p> <p>14 Q One other thing that's not uncommon, we're</p> <p>15 talking about things that happened years ago, it's not</p> <p>16 uncommon, human nature, where your memory might get jogged</p> <p>17 about something later on about a topic we were talking</p> <p>18 about earlier in a deposition. If that happens, I want</p> <p>19 you to take an opportunity to revisit the answer. Just</p> <p>20 come out and say, Oh, Nick, I just remember that guy's</p> <p>21 name or I just remembered something, it's actually a</p> <p>22 different date or it happened a little differently. Take</p> <p>23 the opportunity to do that today, okay?</p> <p>24 A Okay.</p> <p style="text-align: right;">Page 9</p>

1 **Q** So you are currently a sergeant with the
2 **Montgomery County Sheriff's Office; is that correct?**
3 A That's correct.
4 **Q And how long have you been with the sheriff?**
5 A For a little over 20 years.
6 **Q Can you tell me a little bit about your**
7 **employment history with the sheriff; where you started,**
8 **where you worked, the ranks that you've achieved, that**
9 **kind of thing?**
10 A Actually, October 30th, '95 is when I started
11 with the sheriff's office as a corrections officer.
12 **Q Okay.**
13 A And then in '99, I went through the police
14 academy and was promoted to the rank of deputy. And then
15 from there, I was promoted to detective.
16 **Q What year was that; do you remember?**
17 A That was 2005 or 2006.
18 **Q Okay.**
19 A I'm not a hundred percent sure.
20 And then from there -- Do you want to know
21 duties within the detective's position or --
22 **Q Not yet.**
23 A Okay.
24 **Q Why don't you tell me the next --**

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1 A Then the next step would be in 2010, I was
2 promoted to sergeant. And that's my current position.
3 **Q I'll try to go back and go through each**
4 **position a little bit here. As a corrections officer, did**
5 **you work in the Montgomery County Jail for about four**
6 **years, '95 to '99?**
7 A Yeah. Three, three and a half or so.
8 **Q Okay.**
9 A Yeah.
10 **Q And then you went to the police academy and**
11 **became deputized; correct?**
12 A That's correct.
13 **Q And once you became a deputy in '99, where were**
14 **you working?**
15 A I was assigned to a division in Harrison
16 Township, Ohio.
17 **Q Patrol?**
18 A Patrol, yes.
19 **Q Okay.**
20 A Road patrol.
21 **Q How many years were you on road patrol?**
22 A I was on -- until I got promoted to detective.
23 **Q '05, '06, around there?**
24 A Yeah.

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1 **Q We won't hold you to those dates specifically.**
2 **So the detective position, that promotion, tell me how**
3 **your job changed.**
4 A I was promoted into a detective's position in
5 what was called the Organized Crime Unit through the
6 Montgomery County Sheriff's Office. And then do you want
7 to know --
8 **Q Were you working in the jail at all during that**
9 **time as a detective?**
10 A No.
11 **Q So I don't know if road patrol is the right**
12 **word, but you were investigating crimes that happened**
13 **outside of the jail?**
14 A That's correct. From the time I got promoted
15 to deputy to the time I got promoted to sergeant, I had no
16 --
17 **Q You weren't in the jail?**
18 A Yeah, I had no affiliation.
19 **Q That helps. So in 2010, the sergeant position**
20 **is something you had to apply for, I think; right?**
21 A Yes.
22 **Q And you were promoted to sergeant sometime in**
23 **2010. And then tell me how your job responsibilities**
24 **changed.**

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1 A As part of my promotion, I was assigned back to
2 the Jail Division, and then just worked as either -- I
3 held basically three different positions within the jail.
4 **Q Tell me about those.**
5 A It was -- You are a booking sergeant, a housing
6 sergeant, and then I was -- I held a position over
7 transportation slash courts.
8 **Q Got it.**
9 A So we have a specific Transportation Division,
10 we have a specific Court Division, which blankets under
11 the Jail Division. So I'm still under the Jail Division,
12 but I have specific responsibilities as it relates to --
13 or as it related to transportation and courts.
14 **Q Okay.**
15 A And then, you know, within that -- the booking
16 position and the housing position are directly related to
17 -- specifically to the jail.
18 **Q Okay. Sergeant Lewis was here yesterday and he**
19 **helped me out and explained what the booking sergeant**
20 **position was. So I have an understanding about that. Can**
21 **you tell me a little bit about the housing sergeant**
22 **position?**
23 A The housing sergeant position is basically
24 anything that has to do with housing-related issues.

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<p>1 There's several administrative duties, and then -- and of</p> <p>2 like a physical security check, you know, an observation</p> <p>3 of the inmates, which constitutes basically what would be</p> <p>4 considered a walk-thru of the jail.</p> <p>5 Q Okay.</p> <p>6 A So any housing or anything that doesn't relate</p> <p>7 specifically to the first floor. The booking sergeant</p> <p>8 deals with basically, you know, anything in and around the</p> <p>9 first floor. And I know there's like cells there, but,</p> <p>10 you know, they -- that doesn't encompass the housing</p> <p>11 sergeant. Not to say we can't assist in any situation.</p> <p>12 However, our responsibilities are everything basically</p> <p>13 outside of the first floor. Any housing unit, all the way</p> <p>14 down to the ground floor which encompasses maintenance,</p> <p>15 you know, the kitchen, laundry, any of those services,</p> <p>16 those are -- you know, that is covered by the housing</p> <p>17 sergeant.</p> <p>18 So we deal on a day-to-day basis with any</p> <p>19 housing issue and/or anything outside of the normal</p> <p>20 booking sergeant's responsibilities.</p> <p>21 Q As the housing sergeant, are you supervising</p> <p>22 the folks who are responsible for classification of</p> <p>23 incoming detainees?</p> <p>24 A No. That would be -- It's almost a</p> <p style="text-align: right;">Page 14</p>	<p>1 properly moved to another housing location that is</p> <p>2 suitable for their classification.</p> <p>3 Q Okay, thank you.</p> <p>4 I presume that to prepare for today's</p> <p>5 deposition, did you review some documents?</p> <p>6 A I did.</p> <p>7 Q What did you look at, Sergeant?</p> <p>8 A My report, specifically. Just reviewed my</p> <p>9 report, I looked over some policies, and --</p> <p>10 Q When did you look over the policies?</p> <p>11 A Just going back and refreshing when I</p> <p>12 discovered that, you know, there was a deposition</p> <p>13 assigned. So --</p> <p>14 Q Okay.</p> <p>15 A Because I had been -- I had been reassigned as</p> <p>16 a sergeant, I'm not currently in the jail.</p> <p>17 Q I should have asked you that.</p> <p>18 A Yes.</p> <p>19 Q Where are you now and when did you stop working</p> <p>20 at the jail?</p> <p>21 A That would -- I'm horrible with dates.</p> <p>22 Q You're doing pretty good.</p> <p>23 A June. June of this year.</p> <p>24 Q June?</p> <p style="text-align: right;">Page 16</p>
<p>1 co-responsibility, because they are responsible for</p> <p>2 classifying the inmates to be housed.</p> <p>3 Q Who is?</p> <p>4 A The classification officer.</p> <p>5 Q All right.</p> <p>6 A So I may, you know, throughout the day, if</p> <p>7 we're having, you know, an issue or if I will want to get</p> <p>8 somebody particular reclassified or something to that</p> <p>9 effect, I'm dealing with the classification officer. But</p> <p>10 as far as primary supervision at that point, it's the</p> <p>11 booking sergeant.</p> <p>12 Q Got it.</p> <p>13 A And that's almost in relation to proximity. In</p> <p>14 the process of, you know, what encompasses the booking</p> <p>15 sergeant, what transpires is basically the classification</p> <p>16 officer, among several other duties, I mean, they're</p> <p>17 classifying people that have initially came in.</p> <p>18 Q Right.</p> <p>19 A You know. And then -- And then the</p> <p>20 co-responsibility comes in where we have somebody that is</p> <p>21 housed that is being reclassified or being moved for</p> <p>22 whatever reason. And so the classification is involved in</p> <p>23 that, the officer, to assess, you know, to kind of go</p> <p>24 through checks and balances to assure that they're being</p> <p style="text-align: right;">Page 15</p>	<p>1 A Yes.</p> <p>2 Q And where are you assigned now?</p> <p>3 A I'm assigned to a -- it's a Bulk Cash Smuggling</p> <p>4 Task Force.</p> <p>5 Q Sounds good.</p> <p>6 A Yeah. You can throw Miami Valley in front of</p> <p>7 it, and -- but -- it's an addiction task force ran by the</p> <p>8 Ohio Organized Crime Unit supported by Homeland Security.</p> <p>9 Q You told me you looked at some policies when</p> <p>10 you learned you would be deposed. Give me a timeframe.</p> <p>11 Was that in the last month, in the last 24 hours?</p> <p>12 A It would be the last month up and to 24 hours.</p> <p>13 Q Did you review any policies this morning?</p> <p>14 A I did not.</p> <p>15 Q Did you review any policies last night?</p> <p>16 A Briefly.</p> <p>17 Q What policies did you look at last night?</p> <p>18 A Use of force. It would be the General Orders</p> <p>19 Manual Use of Force, GOM 1.1.3. And then it would be the</p> <p>20 jail manual, use of force policy. And then to clarify,</p> <p>21 we're talking last night?</p> <p>22 Q Yeah.</p> <p>23 A Yeah, that -- and then, I'm sorry, it's -- it's</p> <p>24 different within the jail manual. Restraint policy.</p> <p style="text-align: right;">Page 17</p>

<p>1 Q What time did you look at the restraint policy</p> <p>2 last night?</p> <p>3 A Nine, sometime after nine.</p> <p>4 Q Did you look at that restraint policy as a</p> <p>5 result of what took place in the depositions yesterday?</p> <p>6 MR. PREGON: Objection. And I'll tell him not</p> <p>7 to answer. If I asked him to do it, I'm not going to let</p> <p>8 him talk about that.</p> <p>9 BY MR. DICELLO:</p> <p>10 Q And that's important. You know, you're not --</p> <p>11 you have to be conscientious not to disclose to me</p> <p>12 anything you and your lawyers talked about. So both of</p> <p>13 you guys have to make sure not to do that. And I'll try</p> <p>14 not to invade that privilege.</p> <p>15 Prior to last night, had you reviewed the</p> <p>16 restraint policy after this case was filed?</p> <p>17 A Yes.</p> <p>18 Q And that's something you did on your own?</p> <p>19 A That is correct.</p> <p>20 Q So you've talked about some policies, the</p> <p>21 narrative report. Did you look at the video at all to</p> <p>22 prepare for today's deposition?</p> <p>23 A I had an opportunity to review the video, yes.</p> <p>24 Q Sometimes when I get to ask people questions</p> <p style="text-align: right;">Page 18</p>	<p>1 Q Do you remember having any -- Did you work</p> <p>2 Friday, May 18th, 2012 if you remember?</p> <p>3 A I do not know.</p> <p>4 Q Okay.</p> <p>5 A To clarify, I don't know my particular schedule</p> <p>6 in and around that day.</p> <p>7 Q Okay.</p> <p>8 A And so -- And then I don't -- Also to clarify,</p> <p>9 that there was a time where I was assigned to what's</p> <p>10 called a relief, so I do three days as booking and three</p> <p>11 days as housing. Because I was on a six and three</p> <p>12 rotation. So I worked six days and I'm off three days.</p> <p>13 So we're on a constant rotating schedule.</p> <p>14 Q Okay.</p> <p>15 A So I don't know if I was assigned as a relief</p> <p>16 sergeant at that time or I was specifically housing. And</p> <p>17 I don't know, you know, to clarify, I didn't -- I don't</p> <p>18 know my work schedule.</p> <p>19 Q Okay.</p> <p>20 A If you ask additional questions.</p> <p>21 Q That's fine. What I'm trying to get at is when</p> <p>22 you encountered Mr. Richardson, did you in your own mind</p> <p>23 say, oh, I know this guy, or was it just another inmate</p> <p>24 that you hadn't encountered?</p> <p style="text-align: right;">Page 20</p>
<p>1 about things that happened a few years ago, some people</p> <p>2 say, you know, I really only remember this after looking</p> <p>3 at my paperwork. And other people say I can see it in my</p> <p>4 own mind's eye. Independent of looking at the paperwork</p> <p>5 and the video, do you have an independent memory of the</p> <p>6 incident involving Mr. Richardson?</p> <p>7 A I do.</p> <p>8 Q Prior to May 19th, 2012, which I think we've</p> <p>9 agreed was a Saturday, that was the date of the incident,</p> <p>10 is that consistent with your recollection?</p> <p>11 A I know the date, but I don't know the day.</p> <p>12 Q Okay. Well, assuming we're right, it was a</p> <p>13 Saturday, all right, that --</p> <p>14 MR. PREGON: It says it in the narrative, too.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q That may be one thing Jamey and I agree on in</p> <p>17 the case.</p> <p>18 A Okay.</p> <p>19 Q So prior to that day, May 19th, 2012, do you</p> <p>20 know if you had ever encountered Mr. Richardson before?</p> <p>21 A I do not know.</p> <p>22 Q When you encountered him on that day, did you</p> <p>23 recognize him at all?</p> <p>24 A No, I did not.</p> <p style="text-align: right;">Page 19</p>	<p>1 A It was just another inmate.</p> <p>2 Q What shift were you working on May 19th, 2012,</p> <p>3 or watch?</p> <p>4 A That would be what would be considered days or</p> <p>5 second watch.</p> <p>6 Q And remind me, folks have explained this to me,</p> <p>7 but while we have you here just remind me what time you</p> <p>8 would clock in and what time you would clock out.</p> <p>9 A The timeframe for me to work that day would be</p> <p>10 7:15 or 07:15 hours to 3:45 p.m. or 15:45 hours.</p> <p>11 Q On May 19th, 2012, you stayed later than</p> <p>12 3:45 p.m. because of this incident, I believe; correct?</p> <p>13 A That's correct.</p> <p>14 Q So we can feel free to use your narrative if</p> <p>15 you'd like, but I also am interested in what maybe you</p> <p>16 remember independent of the narrative. And you have it in</p> <p>17 front of you. If you have to go back to it, fine. But to</p> <p>18 the extent you can remember, I'm interested in that as</p> <p>19 well. Do you remember how it was that you became aware of</p> <p>20 a situation involving Mr. Richardson in the D Pod?</p> <p>21 A It would have been a radio call for officers</p> <p>22 assistance referencing a medical condition. And I don't</p> <p>23 know -- I don't know if that call came from the officer</p> <p>24 assigned to that housing location or if it came from, per</p> <p style="text-align: right;">Page 21</p>

<p>1 se, like security control.</p> <p>2 Q But it was some type of medical issue was the</p> <p>3 reason for the call?</p> <p>4 A That was the reason for the call, yes.</p> <p>5 Q So do you remember where you were when you got</p> <p>6 that over the radio?</p> <p>7 A I do not.</p> <p>8 Q Did you respond immediately?</p> <p>9 A I don't know if I responded immediately. Just</p> <p>10 from the timeframe from when I arrived in succession to,</p> <p>11 you know, how many people were there before me, I would</p> <p>12 say it would have been almost an immediate response, from</p> <p>13 where I was at within the facility.</p> <p>14 Q Did you respond alone or were there other</p> <p>15 officers with you if you remember?</p> <p>16 A I do not recall.</p> <p>17 Q Can you tell me what you recall seeing when you</p> <p>18 arrived?</p> <p>19 A Into the housing unit?</p> <p>20 Q Sure. Take me through it. Because I know</p> <p>21 you've got to go upstairs and then go to the cell.</p> <p>22 A Well, I don't know, because if -- if I was in</p> <p>23 the housing sergeant's office, which I don't know if I</p> <p>24 responded from there, it's lateral basically. So I come</p> <p style="text-align: right;">Page 22</p>	<p>1 stairwell closest to the cell.</p> <p>2 Q So tell me what you recall seeing as you got up</p> <p>3 to that second floor.</p> <p>4 A As I'm coming up to the second floor, just</p> <p>5 there's no -- just a quick assessment of what the</p> <p>6 surroundings are, what I'm walking into, you know, the pod</p> <p>7 appeared to be locked down versus -- Do I need to clarify</p> <p>8 that?</p> <p>9 Q No.</p> <p>10 A The pod appeared to be locked down, there's no</p> <p>11 inmates out.</p> <p>12 Q Yep.</p> <p>13 A So as I respond up, I have a recollection of</p> <p>14 Officer Benjamin, Tonya Benjamin was the corrections</p> <p>15 officer, she was there. I can't specifically say that I</p> <p>16 knew she was assigned to that housing unit. At this</p> <p>17 point, yes, because, you know, it's through -- you know, I</p> <p>18 get a lineup, basically, so I know who is assigned where.</p> <p>19 Q Okay.</p> <p>20 A So she's standing at the door. And just part</p> <p>21 of our policy, she's waiting for additional units to</p> <p>22 respond to actually open the door before exposing herself</p> <p>23 or anybody else to, you know, what was transpiring.</p> <p>24 Q So let me make sure. When you got onto the</p> <p style="text-align: right;">Page 24</p>
<p>1 out of the office and I'm, you know, 50, 60 feet from the</p> <p>2 primary vestibule door to Pod D. There's Pod C and Pod D,</p> <p>3 so you walk into a -- it's a secondary open area prior to</p> <p>4 going into the actual housing unit. So if I would have</p> <p>5 responded from there, it would have been just a direct</p> <p>6 response, walk directly, you know, down the hallway and</p> <p>7 into the pod.</p> <p>8 At that point, from recollection, I come into</p> <p>9 the housing unit and I know the number, you know, at some</p> <p>10 point I believe that I received, you know, it was in cell</p> <p>11 544. So from working in the jail as a corrections</p> <p>12 officer, they're specifically numbered for a reason.</p> <p>13 There's a succession of numbers between the pods in</p> <p>14 general. So you kind of have or you already know where</p> <p>15 that cell is at. So when I know -- I knew when walking</p> <p>16 into the pod that it would be up to, you know, I couldn't</p> <p>17 pinpoint, but it would be up to, you know, my right.</p> <p>18 Q Okay.</p> <p>19 A Coming in. There's two sets of stairwells, you</p> <p>20 know, that lead to the second floor of the pod from inside</p> <p>21 the pod itself. So I will know there's one to the left</p> <p>22 and there's one to the right, so, you know, depending on</p> <p>23 where the cell is at, which was kind of in the middle of</p> <p>24 the pod, you know, I just responded directly to the</p> <p style="text-align: right;">Page 23</p>	<p>1 second floor, the door to cell 544 was still closed?</p> <p>2 A From my recollection, yes.</p> <p>3 Q I'm going to -- Let's stop there and I want to</p> <p>4 ask you some other questions about in terms of the</p> <p>5 personal gear that you or a CO has on them when they're on</p> <p>6 the housing units. Is it different between a sergeant and</p> <p>7 a corrections officer?</p> <p>8 A It is.</p> <p>9 Q So let's start with the corrections officer.</p> <p>10 Those folks have handcuffs on them?</p> <p>11 A They can, yes. Not all. They're not assigned</p> <p>12 to them and not all corrections officers carry handcuffs</p> <p>13 on their person.</p> <p>14 Q What other kind of equipment are they</p> <p>15 carrying? I know they have a radio. Do they have some</p> <p>16 kind of OC spray or something like that?</p> <p>17 A No.</p> <p>18 Q No spray in the jail?</p> <p>19 A No spray.</p> <p>20 Q Anything -- Go ahead.</p> <p>21 A For a corrections officer.</p> <p>22 Q Corrections officers don't?</p> <p>23 A Right.</p> <p>24 Q What kind of equipment are corrections officers</p> <p style="text-align: right;">Page 25</p>

<p>1 issued?</p> <p>2 A They're issued a radio holder, a duty belt that</p> <p>3 just consists of a belt, you know, and then outside of</p> <p>4 that, a set of keys.</p> <p>5 Q Do any of them carry --</p> <p>6 A And a uniform.</p> <p>7 Q Do any of them carry tasers?</p> <p>8 A No.</p> <p>9 Q And none of them carry any kind of OC spray or</p> <p>10 anything like that?</p> <p>11 A No.</p> <p>12 Q Now, for the sergeants. How is it different in</p> <p>13 terms of the gear that the sergeants carry?</p> <p>14 A The sergeants carry or can carry OC spray and a</p> <p>15 taser.</p> <p>16 Q And cuffs?</p> <p>17 A And cuffs.</p> <p>18 Q On May 19th, 2012, do you remember which of</p> <p>19 those items you had on your person?</p> <p>20 A It would be all three.</p> <p>21 Q So on May 19th, 2012, just for the record, you</p> <p>22 were carrying -- when you responded, you were carrying --</p> <p>23 you had a taser?</p> <p>24 A I had a taser.</p> <p style="text-align: right;">Page 26</p>	<p>1 A So because from the pool of tasers that the</p> <p>2 jail has, you know, you have the transportation deputies</p> <p>3 that they pull from that cache, basically. And then so</p> <p>4 each day you come in -- directly related to taser. You</p> <p>5 come in, there's a book, and you -- you grab a particular</p> <p>6 taser, test fire it, make sure -- or test it.</p> <p>7 Q Spark test it?</p> <p>8 A Yeah, spark test it, not fire it, but --</p> <p>9 Q Yeah.</p> <p>10 A And then you sign it out to yourself. And</p> <p>11 then, you know, at the end of the day you replace it back</p> <p>12 and then you sign it back out.</p> <p>13 So in relation to -- As it relates to Sergeant</p> <p>14 Lewis, I don't know -- we all carry and we have enough OC</p> <p>15 spray that we can carry it individually. Now, that's a</p> <p>16 choice per sergeant. The sergeant can not carry a taser,</p> <p>17 the sergeant can not carry OC spray, and they can not</p> <p>18 carry a cuff on their person.</p> <p>19 Q If they want?</p> <p>20 A Yeah, if they want. They usually do. A lot of</p> <p>21 sergeants, you know, they just have it sitting in</p> <p>22 proximity. So in response, they grab and go. As it</p> <p>23 relates to myself, I carry it on my person at all times.</p> <p>24 Q The taser?</p> <p style="text-align: right;">Page 28</p>
<p>1 Q And you had OC spray?</p> <p>2 A I did.</p> <p>3 Q Is that what you guys use, is it OC?</p> <p>4 A It's OC.</p> <p>5 Q So you had OC spray and you had how many sets</p> <p>6 of cuffs on you?</p> <p>7 A One set.</p> <p>8 Q One set. Sergeant Lewis also responded</p> <p>9 eventually. Do you recall that?</p> <p>10 A I do.</p> <p>11 Q Do you recall what Sergeant Lewis carried in</p> <p>12 terms of taser, OC, cuffs?</p> <p>13 A I do not.</p> <p>14 Q Was it typical for the sergeants that you</p> <p>15 worked with to carry OC and a taser?</p> <p>16 A Yes.</p> <p>17 Q I should have asked Sergeant Lewis that. But</p> <p>18 would your expectation be that Sergeant Lewis on May 19th,</p> <p>19 2012 also had a taser and OC on his duty belt?</p> <p>20 A It's mere speculation, just to make sure that's</p> <p>21 clarified. But tasers are assigned. So -- as is OC</p> <p>22 spray. But there's not enough tasers for each sergeant to</p> <p>23 have one individually.</p> <p>24 Q Okay.</p> <p style="text-align: right;">Page 27</p>	<p>1 A The spray, cuffs, and taser.</p> <p>2 Q Okay.</p> <p>3 A And the taser, when applicable, when I can get</p> <p>4 it assigned to me or when I can assign it out to myself.</p> <p>5 As far as Sergeant Lewis, mere speculation, because of the</p> <p>6 timeframe from which this event occurred, around shift</p> <p>7 change --</p> <p>8 Q Yep.</p> <p>9 A -- I don't know if he -- You know, like I said,</p> <p>10 I was -- I wasn't around him or don't recall being around</p> <p>11 him to know that he had an opportunity to have a taser</p> <p>12 issued out to him.</p> <p>13 Q Okay.</p> <p>14 A Or self issued to himself.</p> <p>15 Q Okay.</p> <p>16 A And then from just working around him or with</p> <p>17 him, I believe he carried OC spray on his person at all</p> <p>18 times.</p> <p>19 Q Thank you. Let's deal with this right now. At</p> <p>20 no time on May 19th, 2012, you did not deploy your taser</p> <p>21 against Mr. Richardson; correct?</p> <p>22 A That is correct.</p> <p>23 Q And the reason you didn't deploy a taser</p> <p>24 against him is because it wouldn't have been a reasonable</p> <p style="text-align: right;">Page 29</p>

<p>1 use of force; correct?</p> <p>2 MR. PREGON: Objection.</p> <p>3 Go ahead.</p> <p>4 A I believe it didn't -- it didn't meet the</p> <p>5 criteria for me to deploy the taser.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q So let me break that down. It didn't meet the</p> <p>8 criteria, whatever Mr. Richardson's actions were, it</p> <p>9 didn't rise to the level that you felt tasing him was</p> <p>10 appropriate; correct?</p> <p>11 A That would be correct.</p> <p>12 Q All right. Before I went on that tangent, you</p> <p>13 were at the top of the stairs and the door was closed. Do</p> <p>14 you remember who else was there when you got to the top of</p> <p>15 the stairs and you could see Officer Benjamin by the door</p> <p>16 of cell 544?</p> <p>17 A A direct recollection would be Officer Dustin</p> <p>18 Johnson.</p> <p>19 Q Officer Johnson sat where you are yesterday and</p> <p>20 he said he had a trainee with him, Officer Henning. Do</p> <p>21 you remember Henning?</p> <p>22 A I do remember Henning. But as far as where he</p> <p>23 was at and where he was with us in response to, I can't --</p> <p>24 you know, I can't say for 100 percent that he was like</p> <p style="text-align: right;">Page 30</p>	<p>1 entry before me. And then just, again, according to</p> <p>2 assessment of what's transpiring, what am I seeing, I'm</p> <p>3 gathering intel just visually --</p> <p>4 Q Okay.</p> <p>5 A -- in relation to the information provided over</p> <p>6 the radio what we were responding to, some sort of medical</p> <p>7 emergency.</p> <p>8 Q When you entered the cell, Mr. Richardson was</p> <p>9 sitting on the floor; correct?</p> <p>10 A That is correct.</p> <p>11 Q His roommate, cellmate, Marcus Maxwell,</p> <p>12 appeared to be trying to provide some assistance to</p> <p>13 Mr. Richardson; correct?</p> <p>14 A Yes.</p> <p>15 Q When you entered cell 544, you could see that</p> <p>16 Mr. Richardson had some blood and saliva coming out of his</p> <p>17 mouth?</p> <p>18 A Not immediately.</p> <p>19 Q You didn't notice that immediately?</p> <p>20 A No.</p> <p>21 Q When you entered the cell, Mr. Richardson was</p> <p>22 sitting on the floor and he was facing the outside wall</p> <p>23 near the door; is that correct?</p> <p>24 A Yes.</p> <p style="text-align: right;">Page 32</p>
<p>1 directly behind me or directly in front of me. I don't</p> <p>2 have that recollection. I do -- My -- My complete recall</p> <p>3 is Officer Johnson was in proximity to me.</p> <p>4 Q Got it.</p> <p>5 MR. DICELLO: Can we go off the record real</p> <p>6 quick?</p> <p>7 (Discussion held off the record.)</p> <p>8 BY MR. DICELLO:</p> <p>9 Q Your height and weight?</p> <p>10 A I'm approximately 178, six foot. I'm</p> <p>11 shrinking.</p> <p>12 MR. PREGON: Me, too.</p> <p>13 BY MR. DICELLO:</p> <p>14 Q Was that your approximate weight back in May of</p> <p>15 2012, 180 pound-ish?</p> <p>16 A Yeah, give or take two pounds or --</p> <p>17 Q So prior to the door to 544 being opened, if I</p> <p>18 understand correctly, you, Officer Johnson, Officer</p> <p>19 Henning, and Officer Benjamin were in the immediate</p> <p>20 vicinity of that door?</p> <p>21 A Correct.</p> <p>22 Q So what happened next?</p> <p>23 A At that point, upon responding to the cell, she</p> <p>24 opened the door, and then that's when Officer Johnson made</p> <p style="text-align: right;">Page 31</p>	<p>1 Q Okay.</p> <p>2 A That's -- The outside -- Yes.</p> <p>3 Q Explain the outside wall to me.</p> <p>4 A Outside or opposite wall, I would say.</p> <p>5 Q Opposite?</p> <p>6 A Can I put the cell in perspective --</p> <p>7 Q Please.</p> <p>8 A -- as far as a rectangle?</p> <p>9 Q Yeah.</p> <p>10 A So he's at one side of a long end of the</p> <p>11 rectangle facing directly across at the other long side.</p> <p>12 Q And the door would be to his left as he's</p> <p>13 sitting on the floor?</p> <p>14 A Door would be to his left.</p> <p>15 Q Got it. Okay.</p> <p>16 A With his back against the wall. I mean, he's</p> <p>17 not sitting in the middle of the cell, he's, you know,</p> <p>18 sitting against the wall.</p> <p>19 Q Understood.</p> <p>20 When you entered the cell, Mr. Richardson was</p> <p>21 attempting to stand up or roll forward; correct?</p> <p>22 A That is correct.</p> <p>23 Q Mr. Richardson appeared disoriented when you</p> <p>24 walked in; true?</p> <p style="text-align: right;">Page 33</p>

<p>1 A Yes. Assessing what was going on, yes. I</p> <p>2 would say, again, I started with he was in a state of</p> <p>3 panic, you know, just -- and then, you know, and then</p> <p>4 grabbing all the additional information, you know, again,</p> <p>5 this is, you know, within seconds of getting in there and</p> <p>6 gathering what is transpiring. You know, that was my</p> <p>7 recollection.</p> <p>8 Q What about his -- It's a good description. But</p> <p>9 what about his demeanor or appearance caused you to</p> <p>10 believe he was in a state of panic?</p> <p>11 A Just everything I coupled with it. His look,</p> <p>12 basically. When you take in -- He had -- You know, in</p> <p>13 dealing with him and looking at him, I mean, he's looking</p> <p>14 at you, but he isn't.</p> <p>15 Q Yeah.</p> <p>16 A You know, it's almost like he's looking at you,</p> <p>17 but it's not receptive to him that you're even standing</p> <p>18 there.</p> <p>19 Q Okay.</p> <p>20 A And then just his -- his physical demeanor, his</p> <p>21 actions and motions.</p> <p>22 Q His physical demeanor while he was still in the</p> <p>23 cell was lethargic; correct?</p> <p>24 A Yeah. And I base that off of his -- his</p> <p style="text-align: right;">Page 34</p>	<p>1 one, we're responding -- you know, taking all the intel in</p> <p>2 and gathering and assessing as I'm going along, you know,</p> <p>3 he has -- responding to what is perceived to be a medical</p> <p>4 condition. I'm getting, you know, that he's -- you know,</p> <p>5 he's not responsive, he's disoriented, there's an</p> <p>6 appearance of a medical issue.</p> <p>7 Q Yep.</p> <p>8 A You know, I have no medical training or</p> <p>9 background to clarify.</p> <p>10 Q Yep.</p> <p>11 A But just experience, knowledge, you know,</p> <p>12 assessing, putting it together. And then again, not to</p> <p>13 have him stand up, if he's in that condition, again, if he</p> <p>14 stands up, just hypothetically, you know, then he can fall</p> <p>15 down.</p> <p>16 Q Okay.</p> <p>17 A So you know, keep him on the ground, closest to</p> <p>18 the ground, minimize injury to that extent, an overall</p> <p>19 thought process of security and safety of the facility.</p> <p>20 Q You said that he appeared to have some kind of</p> <p>21 unknown medical condition. Assuming that he was in the</p> <p>22 throws of some type of medical episode, whether it be a</p> <p>23 seizure or a heart attack or a stroke, something like</p> <p>24 that, do you agree that putting his body under additional</p> <p style="text-align: right;">Page 36</p>
<p>1 movements at that point.</p> <p>2 Q Uncoordinated?</p> <p>3 A To an extent, yes. When we came in and we</p> <p>4 started addressing him, I do recall like, you know, it's</p> <p>5 like, again, he's starting to -- you know, he's motioning</p> <p>6 and he's trying to get up. So you know, it's like, "No,</p> <p>7 stay down, stay down," you know, give him verbal commands</p> <p>8 to stay down. But I do have a complete recollection of</p> <p>9 the fact that he -- he kind of, you know -- you know, I</p> <p>10 had my hand on like his shoulder, and he's trying to like</p> <p>11 wave me off. And it's, you know, it's -- it's very kind</p> <p>12 of slow and just uncontrolled, you know. It's not very</p> <p>13 specific or direct.</p> <p>14 Q Right. And you described him at that point in</p> <p>15 time as being unbalanced?</p> <p>16 A That would be the unbalanced.</p> <p>17 Q Yeah.</p> <p>18 A Just, you know, just his movements.</p> <p>19 Q Okay. Why did you want him to stay on the</p> <p>20 floor?</p> <p>21 A Well, one, if he's in that state, and he's</p> <p>22 having a medical condition, there's no need for him to,</p> <p>23 one, stand up, which creates a bigger risk. And again,</p> <p>24 the assessment of the whole situation, that is, you know,</p> <p style="text-align: right;">Page 35</p>	<p>1 stress is something you try to avoid doing?</p> <p>2 A I would not agree to that.</p> <p>3 Q So putting his body under additional stress,</p> <p>4 even if he's in the throws of a medical emergency, is</p> <p>5 something that you think would be okay to do?</p> <p>6 A As it relates to my specific actions to the --</p> <p>7 to the situation?</p> <p>8 Q Yeah.</p> <p>9 A I don't agree.</p> <p>10 Q So I think what you're telling me is from your</p> <p>11 perspective as a corrections officer, you would be willing</p> <p>12 to put his body under additional stress, physical,</p> <p>13 emotional, even if he's in the throws of a medical</p> <p>14 emergency; correct?</p> <p>15 A Yes. And let me -- let me blanket.</p> <p>16 Q Was that a yes?</p> <p>17 A I'm sorry. Can you re-ask the question? I</p> <p>18 apologize.</p> <p>19 Q That's okay. I'm getting this concept you've</p> <p>20 entered this cell and you see this guy, he's on the floor,</p> <p>21 you're responding to a medical emergency, he doesn't look</p> <p>22 good; right?</p> <p>23 A He's in a situation. I don't say "look good."</p> <p>24 You know, that's --</p> <p style="text-align: right;">Page 37</p>

<p>1 Q You don't know if he's having a seizure or a</p> <p>2 heart attack or a stroke, you just don't know; right?</p> <p>3 A I don't know.</p> <p>4 Q And what I'm asking you is: You're telling me</p> <p>5 that you would still be willing to put him under</p> <p>6 additional physical stress even though he might be in the</p> <p>7 throws of a medical emergency?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A Can I make a clarification as far as a medical</p> <p>11 condition?</p> <p>12 Q Sure.</p> <p>13 A As far as medical condition and articulation to</p> <p>14 my thought process, it would be -- it's not the perceptual</p> <p>15 like a seizure, you know, heart condition, this, that.</p> <p>16 That can encompass a psychological situation. It can also</p> <p>17 encompass a drug-induced situation. So you know, just to</p> <p>18 clarify that. Again, that's -- that's everything that I</p> <p>19 -- you know, I have to take in or take into consideration</p> <p>20 when putting myself and officers in positions.</p> <p>21 Q So let me follow up on that. I mean, you know</p> <p>22 based on your training that inmates who are in the throws</p> <p>23 of a psychiatric emergency or a medical emergency or a</p> <p>24 drug-induced emergency are at a higher risk of injury and</p> <p style="text-align: right;">Page 38</p>	<p>1 following your commands, you couldn't tell because it</p> <p>2 didn't appear that he was really understanding what was</p> <p>3 going on; is that a fair way to describe it?</p> <p>4 A That would be a fair way to describe it.</p> <p>5 Q All right. And then you say Richardson, I'm</p> <p>6 going by your narrative report, Officer -- Sergeant, you</p> <p>7 said, "Richardson turned his head toward me and I could</p> <p>8 see that he had blood and saliva coming from his mouth."</p> <p>9 Was this while he was still seated on the ground?</p> <p>10 A Yes.</p> <p>11 Q You say "blood and saliva." So you saw both?</p> <p>12 A Yes.</p> <p>13 Q All right.</p> <p>14 A Perceptually. Just be the combination of, you</p> <p>15 know, just blended in.</p> <p>16 Q Yeah.</p> <p>17 A You know, just --</p> <p>18 Q Was it running down his chin or --</p> <p>19 A It would be off to -- on his lip or off -- down</p> <p>20 his lip to an extent.</p> <p>21 Q Was he saying anything while he was still</p> <p>22 sitting on the floor?</p> <p>23 A No.</p> <p>24 Q Was he making any noises?</p> <p style="text-align: right;">Page 40</p>
<p>1 death. You do know that; right?</p> <p>2 MR. PREGON: Objection.</p> <p>3 Go ahead.</p> <p>4 A To an extent, yes. There is --</p> <p>5 BY MR. DICELLO:</p> <p>6 Q It's a possibility?</p> <p>7 A There is a possibility.</p> <p>8 Q Okay.</p> <p>9 A I'll agree with that.</p> <p>10 Q And so that is something that you do have to</p> <p>11 have in your mind, that this particular inmate, given his</p> <p>12 unknown medical or psychological or drug-induced</p> <p>13 condition, could be at an increased risk of injury or</p> <p>14 harm; correct?</p> <p>15 A It is a possibility.</p> <p>16 Q So you notice his demeanor is lethargic and</p> <p>17 unbalanced, and you also notice that he is not appearing</p> <p>18 to comprehend your verbal commands; true?</p> <p>19 A That is correct, yes.</p> <p>20 Q So I think you told him to sit down, to stay</p> <p>21 down, and he was trying to get up. That is what you</p> <p>22 perceived; correct?</p> <p>23 A Yes.</p> <p>24 Q And whether or not he was intentionally not</p> <p style="text-align: right;">Page 39</p>	<p>1 A Yes. It was just like a grunting, like a</p> <p>2 grunting whining sound.</p> <p>3 Q And I'm not going to ask you to try to recreate</p> <p>4 it. I don't know how she would write that down.</p> <p>5 A Yeah, I don't know how long she would write</p> <p>6 that down, yeah.</p> <p>7 Q Did he appear to be in pain?</p> <p>8 A No.</p> <p>9 Q How was his breathing? Was it labored? Could</p> <p>10 you tell?</p> <p>11 A Accelerated.</p> <p>12 Q So while he was sitting, he was grunting and</p> <p>13 his breathing was rapid?</p> <p>14 A Rapid.</p> <p>15 Q You then say in your narrative, and I think</p> <p>16 you've described this for us today, but you say, "Inmate</p> <p>17 Richardson had a dazed/unfocused expression on his face</p> <p>18 and didn't appear to be comprehending our verbal</p> <p>19 direction"; correct?</p> <p>20 A That is correct.</p> <p>21 Q And additionally, he didn't appear to you to be</p> <p>22 comprehending the events going on around him; correct?</p> <p>23 A That's correct.</p> <p>24 Q And based on your experience, he was in the</p> <p style="text-align: right;">Page 41</p>

<p>1 throws of some unknown medical issue; correct?</p> <p>2 A That is correct.</p> <p>3 Q So when you have someone like that, and</p> <p>4 officers go hands-on with an inmate like that, would you</p> <p>5 expect potentially some resistance from someone who</p> <p>6 doesn't understand what's happening?</p> <p>7 A Yes. Or not -- I wouldn't expect or you would</p> <p>8 make an assumption that it could go that direction.</p> <p>9 Q So what I'm getting at is corrections officers</p> <p>10 have to expect that that could happen, that when you go</p> <p>11 hands-on with somebody who is in the throws of a medical</p> <p>12 episode, who doesn't understand what is going on around</p> <p>13 him, that that person may react in what is perceived to be</p> <p>14 a combative or resistive way; correct?</p> <p>15 MR. PREGON: Objection.</p> <p>16 A Not a combative or -- Combative or resistive</p> <p>17 way would be their action. To clarify. I didn't</p> <p>18 completely understand.</p> <p>19 BY MR. DICELLO:</p> <p>20 Q Yeah, let me repeat the question. Because</p> <p>21 you're encountering an inmate who is in the throws of some</p> <p>22 potential medical episode, and it appears to you, the</p> <p>23 corrections officer, that he does not comprehend what's</p> <p>24 going on around him, in those circumstances a corrections</p> <p style="text-align: right;">Page 42</p>	<p>1 A Yes. More so than that.</p> <p>2 Q So responding to medical calls or medical</p> <p>3 emergencies is very common at the Montgomery County Jail</p> <p>4 for corrections officers; true?</p> <p>5 A Yes.</p> <p>6 Q So corrections officers should be trained in</p> <p>7 how to handle someone who is in the throws of a medical</p> <p>8 emergency who may become resistive when you go hands-on;</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q And they should be trained in ways that</p> <p>12 minimize the risk of injury and death to the inmate who is</p> <p>13 in the throws of that medical episode; correct?</p> <p>14 A Yeah. And that would be encompassed under just</p> <p>15 any contact. I mean, you know, in addition to the medical</p> <p>16 emergency. It's just, you know, the defensive tactics</p> <p>17 that are taught. You know, it's a -- it's a large blanket</p> <p>18 because, you know, there isn't enough, you know, ink and</p> <p>19 paper to lay out every single possible scenario when</p> <p>20 dealing with a human being in those instances.</p> <p>21 Q Okay.</p> <p>22 A So -- There's training that gives parameters</p> <p>23 and understanding on how to deal with a situation they</p> <p>24 perceive.</p> <p style="text-align: right;">Page 44</p>
<p>1 officer has to expect or be prepared for the inmate to</p> <p>2 become resistive when officers go hands-on; correct?</p> <p>3 MR. PREGON: Objection.</p> <p>4 A I would -- I would agree to that.</p> <p>5 BY MR. DICELLO:</p> <p>6 Q And so corrections officers have to be trained</p> <p>7 in how to handle those situations where members of the</p> <p>8 public who are detained at the jail, temporarily, are in</p> <p>9 the throws of a medical episode, might become resistive</p> <p>10 when officers go hands-on? They have to be trained in</p> <p>11 those situations; correct?</p> <p>12 A That would be -- Is that a yes or a no?</p> <p>13 Q I'm hoping.</p> <p>14 A I don't know if that could be a yes or a no</p> <p>15 question.</p> <p>16 Q So you can't answer yes, that officers should</p> <p>17 be trained to encounter those situations?</p> <p>18 A Yes, the officers should be trained to, you</p> <p>19 know, be able to respond to something to that effect, yes,</p> <p>20 sir.</p> <p>21 Q Because I've deposed some other corrections</p> <p>22 officers, and one of them, I can't remember who right now,</p> <p>23 said, you know, we respond to medical calls on a weekly</p> <p>24 basis at a minimum. That's true; correct?</p> <p style="text-align: right;">Page 43</p>	<p>1 Q And that should include a situation where an</p> <p>2 inmate is in the throws of a medical episode and may</p> <p>3 become resistant; correct?</p> <p>4 A That would be correct.</p> <p>5 Q And you say it's encompassed within the</p> <p>6 defensive tactics training. But we do agree that inmates</p> <p>7 who are in the throws of a medical episode are at a higher</p> <p>8 risk of injury and death; correct? Potentially.</p> <p>9 A I would agree.</p> <p>10 Q So the door is opened and then, according to</p> <p>11 your narrative, you and Officer Johnson grab Inmate</p> <p>12 Richardson; correct?</p> <p>13 A Grab -- Yes, we make contact with him. Not</p> <p>14 necessarily grab him at that point.</p> <p>15 Q Well, you used the word "grab."</p> <p>16 A Oh. I would say at that point --</p> <p>17 Q "Officer Johnson and I grabbed Inmate</p> <p>18 Richardson"; right?</p> <p>19 A Okay. Yeah. Yes.</p> <p>20 Q Okay. So the first thing you and Officer</p> <p>21 Johnson did was, once you went hands-on, was to grab him;</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q Where did you grab him?</p> <p style="text-align: right;">Page 45</p>

1 A I specifically -- Well, he had an arm out,
 2 reached out to me, so take control of the arm, and then it
 3 would be a hand on his shoulder to -- at some point. I
 4 don't necessarily know if -- I may have -- I got ahold of
 5 his shirt just, you know, for, you know, a control issue,
 6 but I don't know, and/or just place my hand on his
 7 shoulder.

8 **Q We don't have a videographer here. You're**
 9 **waving your left arm around. Do you remember**
 10 **Mr. Richardson reaching out with his left arm and you**
 11 **grabbing his left arm?**

12 A Yes.

13 **Q That's your best memory?**

14 A That's my best memory.

15 **Q And where did Officer Johnson grab him?**

16 A I believe on his right side.

17 **Q And you say this was to control**
 18 **Mr. Richardson's movement to prevent Mr. Richardson from**
 19 **injuring himself; correct?**

20 A Yes.

21 **Q So then if I understand your narrative, you and**
 22 **Officer Johnson, after grabbing Inmate Richardson, pulled**
 23 **him out of the cell onto the walkway; correct?**

24 A Yes.

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1 **Q And --**

2 A In a sequence of events, because of where we
 3 were at. But just to clarify, going, you know, off the --
 4 at that point we had him, and because the environment from
 5 which we were operating in, in the confines of the cell, I
 6 made the choice to pull him out into a bigger open area.

7 **Q So somebody yesterday told me that one of the**
 8 **risks of trying to control an inmate outside the cell is**
 9 **you're in close proximity to a railing that goes over an**
 10 **edge down to the first floor; correct?**

11 A There is a railing, yeah, that keeps you from
 12 going to the first floor, yes.

13 **Q So once you pulled him out of the cell, how far**
 14 **from that railing were you?**

15 A Two to three feet. I don't know the -- maybe
 16 the whole walkway up there is six to seven feet, roughly.

17 **Q And then what are the dimensions of the cell**
 18 **approximately? I'm not going to hold you to it.**

19 A Maybe eight-by-twelve. Maybe a little smaller.

20 **Q And so your thought process was it's too --**
 21 **this is too confined and closed a space, I want to get**
 22 **Mr. Richardson out into a larger space out on the walkway?**

23 A A larger and safer space.

24 **Q Tell me how it's safer.**

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1 A Can I go --

2 **Q Sure.**

3 A Let me go back to the dimension. Eight to
 4 twelve is wall to wall, or wall dimensions. That doesn't
 5 encompass the, you know, the concrete and steel bench or
 6 bed that's within the cell, it doesn't also encompass the,
 7 you know, the concrete and wood table/desk that's in
 8 there, a chair, a stainless steel toilet that protrudes
 9 from the wall. So to move forward a little bit to your
 10 question, you know, when you have nothing but concrete,
 11 steel that has sharp edges, and hard surfaces, you know,
 12 and to move -- and again, there's an additional inmate,
 13 you know, I have to take into account that I have an
 14 inmate, a secondary inmate that's in that cell with us.
 15 So again, to create a safer position for us, to move him
 16 out into the walkway to an extent. And from my
 17 recollection, he wasn't all the way out onto the walkway.
 18 There was still a portion, like his legs or something,
 19 that were still somewhat in the cell.

20 **Q So how did you -- when you say you and Officer**
 21 **Johnson pulled him, do you remember how it was that you**
 22 **were pulling him out of the cell?**

23 A Well, he -- again, you know, he was naturally
 24 trying to stand up or roll forward.

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1 **Q Yeah.**

2 A So we just kind of went with his motion as
 3 well. He was going forward. So you know, my
 4 recollection, he just rolled forward and we, you know,
 5 basically grabbed his arm and slid him out into the -- or
 6 onto the walkway.

7 **Q Did you and Officer Johnson have any difficulty**
 8 **in doing that, in repositioning Mr. Richardson?**

9 A Not that I recall.

10 **Q All right. So once you got him out of the**
 11 **cell, he was positioned on his belly facedown on the**
 12 **ground; correct?**

13 A He was facedown, yes.

14 **Q And then you and Officer Johnson tried to cuff**
 15 **his hands behind his back; correct?**

16 A Not initially.

17 **Q So what happened once you got him out of the**
 18 **cell and he was on his belly?**

19 A At that point, again, during this whole time,
 20 we're trying to -- to again give him verbal direction, try
 21 to get -- you know, elicit a response from him and also,
 22 you know, try to get something, some verbal notification
 23 of what's transpiring with him, you know. You know, if he
 24 said "my chest" or, you know, "my leg," or something, that

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<p>1 would give us some kind of indication of what was 2 transpiring with him. You know, we were trying to elicit 3 a response from him, you know, give him verbal direction, 4 "stay on the ground, stay on the ground," you know, "sir, 5 what is wrong with you," you know, "what is going on"? 6 And you know, trying to elicit that information as well to 7 help us assess what we are dealing with.</p> <p>8 Q Okay.</p> <p>9 A And so that is going on. So when we got him 10 out of the cell, again, at that point he's trying to -- 11 you know, he's drawing his arms into -- under his body, 12 obviously, in a natural position to lift himself up, 13 because he's still trying to stand up at this point. And 14 again, you know, not knowing exactly what is going on with 15 him and, you know, one, if he gets to -- gets to his 16 knees, gets to his feet, you know, just we're losing a 17 control issue and creating a safety issue for everybody. 18 That's when I made the determination to get him cuffed.</p> <p>19 Q Okay.</p> <p>20 A To gain more control over him. Because he was 21 a big individual.</p> <p>22 Q Yeah.</p> <p>23 A He was certainly larger than I was. And you 24 know, strength-wise, you know, you have to make those</p> <p style="text-align: right;">Page 50</p>	<p>1 ours. And I have to assess the safety of the facility as 2 a whole.</p> <p>3 So again, we have to maintain a measure of 4 control over him to make sure, one, he doesn't injure 5 himself more or he gets in a position that creates a 6 situation for his safety and ours. Again, naturally, and 7 traditionally, you know, from training and experience, you 8 have more control over a person when they're on the ground 9 --</p> <p>10 Q Okay.</p> <p>11 A -- and you're -- you're standing and they're on 12 the ground.</p> <p>13 Q So then you just told me you made a decision to 14 handcuff him because he was trying to get off the ground?</p> <p>15 A Yes.</p> <p>16 Q So you thought the safest thing for 17 Mr. Richardson would be to cuff his hands behind his back 18 and place him facedown on the ground?</p> <p>19 A Naturally, if we're going to place his hands 20 behind his back, he would have to be facedown on the 21 ground.</p> <p>22 Q I understand that. My question is. You 23 thought the safest thing for Mr. Richardson at this point 24 in time was to cuff his hands behind his back and put him</p> <p style="text-align: right;">Page 52</p>
<p>1 assessments as well. Size, you know, perceptually, you 2 know, he's going to have some strength to him, you know, 3 just from experience.</p> <p>4 Q So let me break that down a little bit. I 5 mean, there was another inmate in the cell who was on his 6 feet; right?</p> <p>7 A Right.</p> <p>8 Q And you didn't have to put him on the ground to 9 maintain control over him; right?</p> <p>10 A There wasn't a perceptual need to --</p> <p>11 Q Okay.</p> <p>12 A -- at that -- at that particular point.</p> <p>13 Q So what about Mr. Richardson trying to get to 14 his feet, why wouldn't you let him up to his feet?</p> <p>15 A Again, we don't know his condition, what is 16 actually going on with him. So --</p> <p>17 Q You assume it's some kind of medical condition?</p> <p>18 A In relation to, you know, a series of different 19 things. So I know that I wrote that he was having a 20 medical condition. But to clarify, what encompasses a 21 medical condition to me is a broad scope of things. So 22 it's a risk management situation. I have to -- I have to 23 maintain -- Because he's in the facility of the Montgomery 24 County Jail, it's our responsibility for his safety and</p> <p style="text-align: right;">Page 51</p>	<p>1 facedown on the ground; correct?</p> <p>2 A That's not correct.</p> <p>3 Q So what was the safest thing for 4 Mr. Richardson?</p> <p>5 A Well, in succession to your question, it would 6 be he has to be facedown, which he was at that point. And 7 then he has to be facedown to handcuff him.</p> <p>8 Q What I'm trying to get at is why are you 9 handcuffing this man who you think is having some kind of 10 medical emergency, he's disoriented, he's not 11 understanding what is going on around him? Why does he 12 need to be handcuffed?</p> <p>13 A Because -- To create a safer issue for himself 14 and us, to maintain control over him, a better control 15 over him.</p> <p>16 Q And I think at this point in time, or close to 17 the time where you and Officer Johnson are trying to 18 handcuff him, Sergeant Lewis responds; is that consistent 19 with your recollection?</p> <p>20 A Yes.</p> <p>21 Q And so how many folks assisted in handcuffing 22 Mr. Richardson? It was you, Officer Johnson, Officer 23 Lewis, and was Henning helping out?</p> <p>24 A Not that I recall.</p> <p style="text-align: right;">Page 53</p>

1 **Q** So there was three of you that were cuffing him
2 up?
3 A There was an additional officer, Officer
4 Stumpff.
5 **Q** Stumpff, okay.
6 A From my recollection.
7 **Q** And Officer Johnson told me that it took you
8 guys less than a minute to get Mr. Richardson cuffed up.
9 Is that consistent with your recollection?
10 A That would be consistent, yeah.
11 **Q** And Sergeant Lewis said that between the time
12 he responded and started providing assistance and getting
13 Mr. Richardson cuffed was about 15 to 20 seconds. Is that
14 consistent with your recollection?
15 A From his response?
16 **Q** Yeah. From the time Lewis showed up and
17 Richardson was cuffed.
18 A Maybe a little less than that.
19 **Q** Okay.
20 A Or I mean, in close proximity.
21 **Q** So between the four of you, getting
22 Mr. Richardson cuffed was not a problem; agreed?
23 A Agreed.
24 **Q** So after Mr. Richardson was now handcuffed with

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1 his hands behind his back, he was placed facedown;
2 correct?
3 A He was facedown to begin with.
4 **Q** Facedown and then you cuffed his hands behind
5 his back and he remained facedown; true?
6 A At that particular time after he was directly
7 cuffed, yes.
8 **Q** You told us just now that Mr. Richardson was
9 pulling his arms up towards his body and he was trying to
10 push himself up, correct, when he first got out of the
11 cell?
12 A Yes.
13 **Q** And in your narrative, you say that he at that
14 point in time was thrashing around and kicking his legs.
15 Was he also doing that?
16 A Can I defer to my report?
17 **Q** Yeah. Yeah.
18 A Okay.
19 **Q** Go ahead.
20 A Yes. Just to make sure that I'm in sequence as
21 far as any documentation, after he was handcuffed, that's
22 when, again, dealing with that direct incident, getting
23 him handcuffed, after that the fact is when I noticed
24 that's when he started, what I described as thrashing

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1 around and kicking his legs, yes.
2 **Q** According to your narrative, he was kicking his
3 legs and thrashing around before you retrieved your
4 restraints. The confusion I'm having is how is he trying
5 to get up and stand up if he was kicking his legs and
6 thrashing around?
7 A If you want to -- In the sequence of the
8 events, I would say at the point that he's trying to bring
9 his arms in and lift up, I -- I can't say, you know, in
10 the sequence of events that's what was transpiring. He
11 was kicking his legs at one point, and then, you know,
12 trying to draw himself in and stand up. Can I say that he
13 was kicking his legs at the time he was trying to push
14 himself up? I don't know. But as far as a sequence of
15 events, you know, from my recollection and documented, you
16 know, that up until that point he was -- he was kicking
17 his legs and -- and then trying to push himself up.
18 **Q** And during this time after you had grabbed him
19 and pulled him out of his cell and he was on his -- he was
20 lying facedown, as your narrative indicates,
21 Mr. Richardson was also verbally grunting and breathing
22 heavily; correct?
23 A Yes. It was the same -- the same grunting, you
24 know, as -- as he was in the -- when we first encountered

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1 him.
2 **Q** And during this time, Mr. Richardson's
3 responses to your verbal directions and questions were
4 incomprehensible; correct?
5 A Yes.
6 **Q** Did you get the sense that he was trying to say
7 something and it was just garbled and incomprehensible?
8 A No.
9 **Q** This was just kind of grunting and --
10 A Yeah, just -- you know, it wasn't -- yeah,
11 there wasn't -- to say that he was actually trying to
12 respond to us, I would say no.
13 **Q** All right. You said earlier that you were
14 trying to elicit information from him and, you know, for
15 example if he said, "Oh, I'm having chest pain," that
16 would have given you some information. If Mr. Richardson
17 said during this episode, "Oh, I'm having chest pain,"
18 would you guys have done anything differently?
19 A Perhaps.
20 **Q** What would you have done?
21 A It would have gave us an indication that, you
22 know, that he was having a problem with his chest, and
23 then it would have given us more indication that maybe,
24 you know, I can't -- you know, based on his actions,

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<p>1 again, you know, I don't know if I would have changed the 2 situation and/or I would have continued with that course 3 of action that I took initially, and then I would have had 4 information to give to medical personnel when they 5 responded.</p> <p>6 Q Would you have cuffed his hands behind his back 7 if he announced he was having chest pain?</p> <p>8 A Again, that's -- that's a hypothetical question 9 I really can't answer, because that wasn't what was 10 transpiring.</p> <p>11 Q Would you have cuffed his hands behind his back 12 and put him facedown if he announced to you that he was 13 having chest pain?</p> <p>14 MR. PREGON: Same objection. Or objection.</p> <p>15 A The course of action that I took, even if -- 16 you know, again, coupled with everything that was 17 transpiring, and at one point if he mentioned that, you 18 know, my chest hurt or made an indication of that, it 19 would have still been the course of action and then follow 20 up to what transpired, you know, I would have put him in 21 the same position I did after the fact.</p> <p>22 Q Did you have any concern that Mr. Richardson 23 had suffered a seizure once you observed the blood and 24 once you saw his behavior, once you pulled him out of the</p> <p style="text-align: right;">Page 58</p>	<p>1 Q Why not?</p> <p>2 A It's kind of a common response, oxygen is. 3 From my experience, you know, dealing with medical 4 response to things, they commonly put oxygen on them 5 because, I mean, 100 percent oxygen kind of assists with 6 several different issues. So you know, when they're 7 actively breathing and it doesn't appear to be labored, 8 just rapid or accelerated, we're not leading to believe he 9 was having some kind of breathing problem because he was 10 putting an oxygen mask on him.</p> <p>11 Q So based on his positioning, based on the 12 totality of the circumstances that we've talked about thus 13 far, you had no concern about Mr. Richardson's ability to 14 breathe; true?</p> <p>15 A That is true.</p> <p>16 Q So that's not something that you were 17 considering as you were addressing the situation; correct?</p> <p>18 A That is correct. Something we didn't talk 19 about is that he was not facedown the whole time.</p> <p>20 Q We'll get to that.</p> <p>21 And then when Medic Stockhauser responded, 22 Mr. Richardson kept yelling, "Get off me, I need out, get 23 me out of here." Do you remember hearing him say that?</p> <p>24 A At that point, yes, when he was trying to put</p> <p style="text-align: right;">Page 60</p>
<p>1 cell? Did that cross your mind, or no?</p> <p>2 A It may have.</p> <p>3 Q Okay.</p> <p>4 A Just to -- You know, going back through a 5 series of, you know, medical incidents you respond to, you 6 try to put some relation to what's transpiring. It may 7 have crossed my mind. I don't have a direct recollection 8 of it.</p> <p>9 Q Do you remember having any concern that 10 Mr. Richardson might be having a heart attack? Did that 11 cross your mind at all?</p> <p>12 A It did not.</p> <p>13 Q And then you indicate Medic Stockhauser 14 responded. Do you remember that?</p> <p>15 A I do.</p> <p>16 Q And Medic Stockhauser was attempting to put an 17 oxygen mask on Mr. Richardson; correct?</p> <p>18 A That is correct.</p> <p>19 Q Based on him grunting, what you observed of 20 him, his rapid breathing, and now seeing a medical person 21 trying to administer Mr. Richardson oxygen, did you have a 22 natural concern that there might be an issue with his 23 breathing?</p> <p>24 A No.</p> <p style="text-align: right;">Page 59</p>	<p>1 the oxygen mask on him. That's the only time that he 2 actually spoke, I mean, per se. And when he said -- when 3 he -- you know, he was making a head gesture that, you 4 know, he was trying to not allow the mask to be put on his 5 face. And then -- And then that's when he said, you know, 6 "Get that off me," and then started to say that, you know, 7 "I need out of here, I need to get out of here," you know, 8 to that extent. But that wasn't -- you know, that verbal 9 dialogue was -- it didn't continue after that. It was -- 10 It was like short and brief, you know.</p> <p>11 Q Well, Medic Stockhauser filled out a narrative 12 where he said that Mr. Richardson kept yelling, "I want 13 loose" and "Get out of here." Did he keep yelling that or 14 not?</p> <p>15 A He did, like I said, for a short period of 16 time. It didn't -- You know, when it started, it didn't 17 continue throughout the whole time that Medic Stockhauser 18 was giving him medical care. Like I said, you know, he 19 started saying that, he repeated it. You know, I can't -- 20 I don't recall the amount of times that he repeated it or 21 repeated, you know, statements related to that. But it 22 was -- you know, it was a short period of time.</p> <p>23 Q After Mr. Richardson was secured in the hand 24 restraints, you say he was actively thrashing around and</p> <p style="text-align: right;">Page 61</p>

1 **grunting; correct?**
2 A Yes.
3 **Q He was struggling; true?**
4 A He was struggling.
5 **Q And so Officer Johnson, Henning, and Stumpff**
6 **continued to hold him down; correct?**
7 A Restrain him, yes.
8 **Q Yeah.**
9 A I wouldn't necessarily hold him down or
10 restrain him from his movements.
11 **Q You told us he was trying to get up; correct?**
12 A I told you that when -- before we handcuffed
13 him, yes.
14 **Q So as soon as he was pulled out of the cell and**
15 **he was put on the ground, the first thing Mr. Richardson**
16 **tried to do was get up; correct?**
17 A Yes.
18 **Q And that's one of the reasons that you put the**
19 **handcuffs on him, so he couldn't get up?**
20 A We have more control over him. Not to say that
21 he didn't, you know -- At that point, you know, from my
22 recall, he didn't try to get up anymore from there.
23 **Q I thought you just told me that you didn't want**
24 **him standing up and that's one of the reasons you put the**

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1 **handcuffs on him, because if he stood up, he could fall**
2 **down and hurt himself; right? We went through that?**
3 A We did go through that.
4 **Q And one of the reasons you put the cuffs on him**
5 **was to prevent him from getting up; correct?**
6 A That's correct.
7 **Q Because you witnessed him try to get up; true?**
8 A That is true.
9 **Q And then with his hands cuffed behind his back,**
10 **three officers controlled him from moving around and**
11 **restrained him; correct?**
12 A Yes.
13 **Q Those officers were preventing Mr. Richardson**
14 **from getting up; yes?**
15 A Amongst other things, yes.
16 **Q They were holding him down on the ground; true?**
17 A They were holding him so he couldn't get up.
18 **Q Okay.**
19 A I mean, yeah, it's playing words, semantics.
20 **Q So then at some point, because this was a shift**
21 **change, you ordered Officer Johnson and Henning to be**
22 **relieved by officers who were coming in on the next shift;**
23 **correct?**
24 A That's correct.

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1 **Q So Officer Henning and Johnson were replaced**
2 **by -- Help me out who the folks were. Was it --**
3 A I do recall an Officer Marshall.
4 **Q Marshall.**
5 A And Officer Mayes.
6 **Q I think Mayes ultimately relived Medic**
7 **Stockhauser near the head?**
8 A Yes.
9 **Q So Marshall was coming on and he relieved**
10 **Officer Johnson. And Officer Stumpff was still involved;**
11 **correct?**
12 A That's correct.
13 **Q Officers, after you had them swap out, officers**
14 **continued to hold Mr. Richardson's legs and both arms;**
15 **correct?**
16 A Are you reading directly from the report?
17 **Q Yeah. "Officers continued to hold**
18 **Mr. Richardson's legs and both arms"; true?**
19 A Yes.
20 **Q And at some point, one of the officers, I think**
21 **it was Dustin Johnson, was straddling him, Mr. Richardson;**
22 **true?**
23 A I don't have any recollection of that.
24 **Q You don't remember that?**

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1 A I don't.
2 **Q What I mean "straddling," I mean the officer**
3 **was on his knees and he was straddling Mr. Richardson's**
4 **hip/thigh area. Do you remember that?**
5 A Over top of him? I do not.
6 **Q And then at this point in time, after the**
7 **officers were switched, is that when you and Sergeant**
8 **Lewis decided to use two sets of cuffs?**
9 A Yeah. During a course of time, like I
10 documented, that -- No. Initially, because of his size --
11 **Q Initially there were two sets and then you guys**
12 **moved to leg shackles?**
13 A Yes.
14 **Q Got it.**
15 A Okay.
16 **Q So you say here, I'm trying to go through**
17 **chronologically, after the officers were swapped out, I**
18 **think you say Mr. Richardson continued actively thrashing**
19 **around?**
20 A Yes.
21 **Q And so he continued to struggle; correct?**
22 A Yes.
23 **Q This is a struggle that is now lasting over ten**
24 **minutes; true?**

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1 MR. PREGON: Objection.
2 A I mean, I can't -- To put a timeframe on it, it
3 was a period of time. Whether -- I don't know whether it
4 was ten minutes or not.
5 BY MR. DICELLO:
6 Q Let me try it this way. We know on the video
7 when Dusty Johnson got relieved.
8 A Okay.
9 Q Okay? And I think you told me while Dustin
10 Johnson was still there, he was actively thrashing around
11 and grunting; correct?
12 A Uh-huh.
13 Q Yes? You just have to say yes.
14 A Yes.
15 Q I told you I'd remind you.
16 A I apologize.
17 Q And then the officers were switched out and the
18 new officers came on. So we know when that happened on
19 the video; correct?
20 A That would be, yeah correct.
21 Q And after the new officers came in, you say
22 Mr. Richardson, he was still actively thrashing around;
23 correct?
24 A Yes.

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1 Q So we can look at the video and look at the
2 time. But whatever that time is, when the new officers
3 come in and they're still holding him, this struggle is
4 going on, if it's around ten minutes, it's been a
5 ten-minute struggle at that point; correct?
6 A Yes.
7 Q I want to take a break from the chronology for
8 a minute and kind of ask you about some of the things that
9 you knew. What you knew, what you did.
10 MR. PREGON: We're at an hour and a half. Do
11 you want to take a quick restroom break?
12 MR. DICELLO: Yeah, that's fine.
13 MR. PREGON: If you're switching gears, that's
14 a good --
15 MR. DICELLO: Yeah, that's fine.
16 (Discussion held off the record.)
17 BY MR. DICELLO:
18 Q Sergeant, we're back from a short break. I
19 want to focus as of the time Mr. Richardson was handcuffed
20 with his hands behind his back and there were three to
21 four officers controlling his movement. I want to ask a
22 couple questions. As of that time, you knew that
23 Mr. Richardson was not armed; correct?
24 A That's correct.

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1 Q And he was handcuffed; true?
2 A He was handcuffed.
3 Q You had some concern that he was having some
4 unknown medical emergency; correct?
5 A That is correct.
6 Q You knew he was overweight; true?
7 A Nick, can I go back to the question about being
8 armed?
9 Q Sure.
10 A Can I clarify that?
11 Q Yeah.
12 A As far as being armed? I'd like to change that
13 to no, because I didn't necessary pat him down, you know,
14 at the time. Not to say that he couldn't have had some
15 form of weapon.
16 Q Did you instruct any of the other officers to
17 pat him down to confirm he did not have a weapon?
18 A No, I did not.
19 Q So fair to say that wasn't a concern of yours,
20 that Mr. Richardson was armed, otherwise you would have
21 instructed somebody to check him for a weapon; correct?
22 A That would be correct, yes.
23 Q Now, you knew that Mr. Richardson was
24 overweight; correct?

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1 A No.
2 Q Did you --
3 A I didn't know that.
4 Q Did you consider whether or not Mr. Richardson
5 was obese?
6 A No.
7 Q So in the decisions you were making about how
8 to position him, how to handcuff him, you were not
9 considering whether or not he was obese; correct?
10 A That would be -- That would be an
11 interpretation of what obesity would be, you know, and I
12 would have to clarify that. So --
13 Q Well, you're supposed to consider whether
14 someone is obese when you're positioning them in
15 handcuffs; correct? Or are you not?
16 A It would be a consideration.
17 Q So was it a consideration in your mind on May
18 19th, 2012?
19 A That he was obese?
20 Q Yes.
21 A No.
22 Q You knew that Mr. Richardson was trying to get
23 off of his belly; correct?
24 A Throughout a portion of the incident, yes.

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<p>1 Q You knew that Mr. Richardson was disoriented; 2 correct? 3 A Yes. 4 Q You knew that he needed medical attention; 5 true? 6 MR. PREGON: Objection. 7 A I don't know that he needed medical attention. 8 BY MR. DICELLO: 9 Q Okay. 10 A That is, you know, a medical emergency. I 11 can't say, you know, what was going on with him, you know. 12 I can't say definitively, you know, he needed medical 13 attention. 14 Q The goal was to get him medical attention 15 though; correct? 16 A It was a portion of the response, yes. 17 Q Mr. Richardson never hurt anyone; correct? 18 A Not to my recollection. 19 Q So to your recollection, Mr. Richardson never 20 hurt anyone; correct? 21 A That would be correct. 22 Q Mr. Richardson never tried to hurt anyone; 23 correct? 24 A Not intentionally, no.</p> <p style="text-align: right;">Page 70</p>	<p>1 you found him; correct? 2 A He was sitting upright on the ground, yes. 3 Q Did you have an understanding that 4 Mr. Richardson had collapsed? 5 A I did not have an understanding of that, no. 6 Q Were you considering maybe that's how 7 Mr. Richardson wound up on the ground? 8 A It may have been a consideration, but I don't 9 have an exact recall of that. 10 Q As of the time you encountered Mr. Richardson, 11 and I've asked a lot of folks this question, 12 Mr. Richardson hadn't violated any jail rules; correct? 13 A Not that I was aware of. 14 Q And Mr. Richardson hadn't committed nor was he 15 in the commission of any crime; correct? 16 A That is correct. 17 Q Once Mr. Richardson was handcuffed and being 18 controlled, his movements being controlled by three to 19 four corrections officers, Mr. Richardson posed no threat 20 to you, did he? 21 A Me personally? 22 Q Yeah. 23 A Not my person, no. 24 Q And Mr. Richardson, once his movements were</p> <p style="text-align: right;">Page 72</p>
<p>1 Q He didn't hurt anybody unintentionally, did he? 2 A He did not. 3 Q Did he ever try to assault anyone? 4 A Not during the incident. 5 Q Did Mr. Richardson ever try to assault anyone 6 ever that you know of? 7 MR. PREGON: Objection. 8 A I do not know. 9 BY MR. DICELLO: 10 Q Mr. Richardson was not being violent, was he? 11 MR. PREGON: Objection. 12 A I mean, violent towards a particular person? I 13 mean, violence is -- that's kind of open-ended. You have 14 to narrow it down for me. 15 BY MR. DICELLO: 16 Q I'm asking you. I know you've encountered 17 violence in the jail before. So I'm asking you as the 18 sergeant. Mr. Richardson was not being violent; correct? 19 A At the time -- At the time of dealing with him, 20 he was not violent towards that. 21 Q You knew Mr. Richardson was bleeding from his 22 mouth; correct? 23 A Yes. 24 Q You knew Mr. Richardson was on the ground when</p> <p style="text-align: right;">Page 71</p>	<p>1 being controlled by corrections officers, Mr. Richardson 2 didn't pose a threat to anyone, did he? 3 MR. PREGON: Objection. 4 A I don't agree with that. 5 BY MR. DICELLO: 6 Q Who was he threatening and how was he 7 threatening that person? 8 A At the point, again, we're dealing with an 9 unknown situation. You know, we're trying to assess and 10 determine what we actually have to interpret what may 11 transpire. Again, if he chose to use a word you 12 suggested, violent, to violently start thrashing around to 13 the point where we have him held or a measure of restraint 14 which can be determined, you know, that can be measured. 15 Would you agree? We can measure restraint. 16 Q Okay. 17 A So we have a -- say a low restraint or a hold, 18 and then he becomes violent, you know, just because he's 19 handcuffed doesn't mean he can't pose a risk to staff. 20 Q You told me he didn't become violent; correct? 21 A He didn't during the incident, yes. 22 Q So I'm not asking what he could have or might 23 have or possibly under some circumstances later would have 24 done, okay? I'm asking, and I think you understand, as a</p> <p style="text-align: right;">Page 73</p>

<p>1 police officer, you have to look at what's objectively</p> <p>2 reasonable, right, what kind of threats are you perceiving</p> <p>3 at the time; correct?</p> <p>4 A In addition to, yes. That is part of an</p> <p>5 overall assessment. But you can't take away what -- You</p> <p>6 know, I can't negate, just because it didn't happen after</p> <p>7 the fact, that I know it didn't happen during the</p> <p>8 incident, I can't rule out that it couldn't happen.</p> <p>9 Q Okay. Inmate Maxwell could have attacked you;</p> <p>10 true?</p> <p>11 A That is a concern, yes.</p> <p>12 Q Any inmate at any time could attack you; right?</p> <p>13 A Any person.</p> <p>14 Q Anything is possible; right?</p> <p>15 A Anything is possible, yes.</p> <p>16 Q But just because anything is possible, that</p> <p>17 doesn't justify putting everyone you encounter in</p> <p>18 restraints; true?</p> <p>19 A That would be true.</p> <p>20 Q So I'm interested in what threats he posed, not</p> <p>21 what potential threats he might have posed if something</p> <p>22 else happened.</p> <p>23 So once he's -- once his movements were being</p> <p>24 controlled by the officers, he didn't pose any threat to</p> <p style="text-align: right;">Page 74</p>	<p>1 the cell. But again, he was removed from the cell because</p> <p>2 of that, to remove the fact that, you know, he's an</p> <p>3 unknown, we don't know his true involvement in the whole</p> <p>4 situation, so we remove that element of risk.</p> <p>5 Q Maxwell, you're talking?</p> <p>6 A Maxwell, yes. We're removing that element of</p> <p>7 risk. And then I have to act on the, you know, the fact</p> <p>8 and circumstances of what I'm perceiving, and I can't not</p> <p>9 take out the fact of what may happen. I have to leave</p> <p>10 that in there.</p> <p>11 Q So what threat did Mr. Richardson pose and who</p> <p>12 was threatened?</p> <p>13 A Because he was still, you know, still actively</p> <p>14 moving around and being held, there's a point in time</p> <p>15 where, you know, and I'm going off knowledge and</p> <p>16 experience, where I've seen, you know, a person that is</p> <p>17 going through a crisis, of whatever sorts, okay? When you</p> <p>18 -- For the extent of safety of the facility and the</p> <p>19 officers, when you put restraint on them, they be -- can</p> <p>20 become violent. So again, because he didn't pose an</p> <p>21 immediate threat on staff, you know, other than we were</p> <p>22 just at that point, it was a safety issue on his part,</p> <p>23 holding him so he doesn't, you know, start thrashing</p> <p>24 around to the point where now he is banging his head or,</p> <p style="text-align: right;">Page 76</p>
<p>1 you, you've told us that. My next question is: Once his</p> <p>2 movements were being controlled by these three to four</p> <p>3 officers, he posed no threat to anyone; correct?</p> <p>4 MR. PREGON: Objection.</p> <p>5 A No.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q Okay.</p> <p>8 A That's not correct.</p> <p>9 Q So how did he threaten these people?</p> <p>10 A You want to keep taking out the fact of what</p> <p>11 could happen.</p> <p>12 Q What threat did happen? That's what I'm</p> <p>13 asking. I'm not asking what threat he might have posed.</p> <p>14 What threat happened?</p> <p>15 A We have the privilege, sir, knowing that after</p> <p>16 the fact. But I can't not take into account what might</p> <p>17 happen.</p> <p>18 Q The same is true of Inmate Maxwell, and he</p> <p>19 wasn't in restraints.</p> <p>20 A Yes. But again, with the explanation of what</p> <p>21 is transpiring, what are we assessing from the situation.</p> <p>22 I notated that I had him removed from the cell or I don't</p> <p>23 -- You know, let me scratch that. At some point in time,</p> <p>24 I don't know if I have direct recall of removing him from</p> <p style="text-align: right;">Page 75</p>	<p>1 okay, just because we've got him handcuffed it's over and</p> <p>2 done with, we can just walk away. That is not the case,</p> <p>3 okay, he's handcuffed, let's let him stand up, and he</p> <p>4 passes out and he falls down, hits his head on the</p> <p>5 railing, hits his head on the floor. Again, as I've</p> <p>6 discussed, there's no soft edges in jail.</p> <p>7 Q Okay.</p> <p>8 A You know, everything is hard, concrete, steel,</p> <p>9 so on and so forth.</p> <p>10 Q Which I'm trying to stay on point here. I'm</p> <p>11 trying to get an answer to the question of what threat did</p> <p>12 Mr. Richardson pose once he was handcuffed on the ground</p> <p>13 with three to four officers controlling his movements?</p> <p>14 MR. PREGON: Objection.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q I haven't heard what threat he posed to anyone</p> <p>17 yet.</p> <p>18 MR. PREGON: I think he's answered the</p> <p>19 question.</p> <p>20 MR. DICELLO: I haven't heard it yet.</p> <p>21 BY MR. DICELLO:</p> <p>22 Q What threat?</p> <p>23 A There was no immediate threat.</p> <p>24 Q All right.</p> <p style="text-align: right;">Page 77</p>

1 A At that time.

2 **Q So there was a decision at some point to get**

3 **the emergency restraint chair; is that correct?**

4 A That is correct.

5 **Q Who made that decision?**

6 A That was my decision.

7 **Q And why was it your decision to get the**

8 **emergency restraint chair?**

9 A It was an ongoing event, medical was still

10 dealing with him, and going to deal with him. And again,

11 forward thinking, continuing to assess the situation that,

12 being on the second level of the pod and him receiving

13 medical care, that was going to have to change. So again,

14 being on the second floor, and how are we going to get him

15 safely down to the first level and, you know, perceivably

16 down to medical. What would be the safest way to do that?

17 You know, in the event -- You know, again, he's still

18 actively moving around, we're trying to control him, so

19 what would be the safest way to move him from the second

20 floor when you have a fixed -- when you have a fixed

21 object, you know, that we could have officers easily carry

22 down a set of steps versus a manipulatable, you know, body

23 or, you know, a structure. I mean, we can carry -- You

24 know, we can carry a, you know, a hundred pound box with,

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1 you know, edges easily. But, you know, you take a hundred

2 pound object that has different edges and whatever, it

3 gets hard to carry and move. So it just creates a big

4 safety risk. So secure him in the restraint chair and

5 then we have a hard object that he's fixed to. We don't

6 have a body -- or what would be considered like a hard

7 board or a body board, you know, that's commonly used by

8 medical personnel.

9 **Q Backboard?**

10 A A backboard, you know, to strap him to.

11 **Q Why don't you guys have one of those?**

12 A Sir, that's up to medical staffing, NaphCare.

13 I don't know.

14 **Q Okay.**

15 A I don't know why we don't have one. But again,

16 I'm just thinking how can we safely, you know, move him

17 down.

18 **Q Let me ask a question: Have you over the**

19 **course of your career used backboards to strap people to**

20 **to transport them?**

21 A I have not.

22 **Q Can you tell me at what point in time you**

23 **remember ordering the restraint chair to be brought to the**

24 **pod?**

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1 A Other than after -- after medical had been

2 assessing him.

3 **Q All right.**

4 A And you know, decisions were being made on our

5 part, which I wasn't privy to all the medical decisions,

6 you know, that's -- that -- you know, you'd have to ask

7 them. But again, just knowing that they're still

8 continuing to -- to treat him and not call in outside

9 resources. So how can we safely remove him from, you

10 know, our current state and get him down one and move him

11 to medical where they have, you know, additional

12 resources.

13 **Q The safer position for Mr. Richardson would**

14 **have been to get him in the restraint chair as opposed to**

15 **leaving him up there on the floor; is that the decision**

16 **you made?**

17 A That would be -- That would be correct, yes.

18 **Q All right. So how long -- What is your**

19 **expectation -- And it's called the emergency restraint**

20 **chair; right?**

21 A It is.

22 **Q Because it's used in emergency situations?**

23 A It is.

24 **Q And so what's your expectation once you call**

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1 **for the emergency restraint chair to respond to an**

2 **emergency? How long do you expect that that takes to get**

3 **the chair to the emergency?**

4 A It's a running expectation. And that's, you

5 know, available personnel, your --

6 **Q There's got to be some expectation in your mind**

7 **that we should be able to get a restraint here within,**

8 **what is it?**

9 A Five to ten minutes.

10 **Q Did the restraint chair get there within five**

11 **to ten minutes?**

12 A I do not know.

13 **Q Why wasn't Mr. Richardson put in the restraint**

14 **chair according to your plan?**

15 A Because of the -- after the fact that -- From

16 my recollection, it would be because it had not -- it had

17 not responded yet, and they administered -- when they

18 administered the medication, and then it -- and then he

19 had a, you know, his medical condition progressed into the

20 fact that we had to provide CPR to him.

21 **Q Do you know how long the chair was sitting**

22 **downstairs waiting for Mr. Richardson?**

23 A I do not.

24 **Q Why wasn't Mr. Richardson put in it as soon as**

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<p>1 the chair got there?</p> <p>2 A Because we actively resolved the immediate</p> <p>3 problem and --</p> <p>4 Q What was that?</p> <p>5 A Getting him safely secured and then medical</p> <p>6 responded to assess him.</p> <p>7 Q Well, he was safely secured pretty quickly,</p> <p>8 wasn't he?</p> <p>9 A He was.</p> <p>10 Q All right. So that issue, to the extent that</p> <p>11 your guys were able to control his movements, was resolved</p> <p>12 within a minute or two; right?</p> <p>13 A Right.</p> <p>14 Q But the restraint chair was ordered after your</p> <p>15 guys were able to secure him; correct?</p> <p>16 A Yes.</p> <p>17 Q Okay. So why wasn't Mr. Richardson put in the</p> <p>18 restraint chair when it got there as an emergency</p> <p>19 precaution?</p> <p>20 A Because it's not normally used for that.</p> <p>21 Q So why did you order it?</p> <p>22 A Because as the situation progressed, time-wise,</p> <p>23 like I said, we don't have a backboard, and how -- how --</p> <p>24 what's the safest way -- and that's just me, you know,</p> <p style="text-align: right;">Page 82</p>	<p>1 officers at the Montgomery County Jail, at any jail, must</p> <p>2 never apply restraints -- when I use the word</p> <p>3 "restraints," I'm including handcuffs and leg shackles and</p> <p>4 all that kind of thing, understood?</p> <p>5 A Understood.</p> <p>6 Q So corrections officers at a jail in a</p> <p>7 community must never apply restraints in ways that my</p> <p>8 restrict breathing; true?</p> <p>9 A You said for every jail. You know, I can only</p> <p>10 account for the Montgomery County Jail. And yes.</p> <p>11 Q Okay.</p> <p>12 A If we know that there's knowledge that it will</p> <p>13 restrict breathing --</p> <p>14 Q Well, let me restate it. Corrections officers</p> <p>15 at the Montgomery County Jail must never apply restraints</p> <p>16 or handcuffs in ways that may restrict breathing; correct?</p> <p>17 A I can't say correct --</p> <p>18 Q Okay.</p> <p>19 A -- 100 percent. I'd have to look at -- If</p> <p>20 you're referring to our direct policy, I'd have to defer</p> <p>21 to that.</p> <p>22 Q Well, I'm reading it word-for-word. Do you</p> <p>23 agree with it or not?</p> <p>24 A Our policy?</p> <p style="text-align: right;">Page 84</p>
<p>1 it's a thinking out of the box situation. What do we</p> <p>2 have, what's our resources available to us where we could</p> <p>3 secure somebody to a fixed object and safely get them</p> <p>4 downstairs and move them to better resources.</p> <p>5 Q And I appreciate that thought process. We've</p> <p>6 been through that. I'm trying to figure out why once the</p> <p>7 restraint chair was brought, pursuant to your order, why</p> <p>8 Mr. Richardson wasn't then put into the restraint chair?</p> <p>9 A Because prior to it responding -- or getting up</p> <p>10 to the housing location, he had, you know, his medical</p> <p>11 condition where he needed CPR.</p> <p>12 Q So you don't think the restraint chair was</p> <p>13 there prior to Mr. Richardson stopping breathing; is that</p> <p>14 your understanding?</p> <p>15 A That is my recollection, yes.</p> <p>16 Q If the restraint chair was there before</p> <p>17 Mr. Richardson stopped breathing, he should have been put</p> <p>18 in it; correct?</p> <p>19 A He -- You know, based on once it got there and</p> <p>20 we got it in position, if, you know, we felt that, again,</p> <p>21 you know, medically, if he was able to be put in it, then</p> <p>22 he would have been put in it, yes.</p> <p>23 Q I want to ask you some kind of general rules,</p> <p>24 Sergeant, and see if you agree or disagree. Corrections</p> <p style="text-align: right;">Page 83</p>	<p>1 Q The rule I just announced, that corrections</p> <p>2 officers at the Montgomery County Jail must never apply</p> <p>3 restraints in ways that may restrict breathing.</p> <p>4 MR. PREGON: You're not reading it</p> <p>5 word-for-word.</p> <p>6 A Yeah.</p> <p>7 MR. DICELLO: I think I am.</p> <p>8 MR. PREGON: I'm looking at it.</p> <p>9 A If you're referring to our policy, can I review</p> <p>10 that so I know what I'm answering?</p> <p>11 BY MR. DICELLO:</p> <p>12 Q You weren't reading the policies when</p> <p>13 Mr. Richardson was being restrained, were you?</p> <p>14 A I was not.</p> <p>15 Q Then so policies are great to have written</p> <p>16 down, but they need to be ingrained and they need to be</p> <p>17 implemented in the midst of fastly-evolving situations;</p> <p>18 correct?</p> <p>19 A That is correct.</p> <p>20 Q Right. So I'm interested in now, and we can</p> <p>21 look at the policy, but right now I'm interested in your</p> <p>22 answer. What's your understanding as a sergeant</p> <p>23 supervising men and women who are restraining members of</p> <p>24 the public in your jail? My question is: Corrections</p> <p style="text-align: right;">Page 85</p>

<p>1 officers at the Montgomery County Jail must never apply</p> <p>2 handcuffs or restraints in ways that may restrict</p> <p>3 breathing; is that true or not true?</p> <p>4 A That would be true.</p> <p>5 Q Okay. Corrections officers at the Montgomery</p> <p>6 County Jail must only use force that is reasonable;</p> <p>7 agreed?</p> <p>8 A That would be agreed.</p> <p>9 Q Corrections officers must only use force that</p> <p>10 is reasonably necessary under the totality of the</p> <p>11 circumstances; true?</p> <p>12 MR. PREGON: Objection.</p> <p>13 Go ahead.</p> <p>14 A That would be to an extent of that, true, yes.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q To what extent is that not true?</p> <p>17 A Let me rephrase. Let's make it true --</p> <p>18 Q Okay.</p> <p>19 A -- for the sake. I apologize.</p> <p>20 Q That's okay.</p> <p>21 Force that is unreasonable is excessive force;</p> <p>22 true?</p> <p>23 MR. PREGON: Objection.</p> <p>24 Go ahead.</p> <p style="text-align: right;">Page 86</p>	<p>1 Q Yeah. First of all, folks that are detained at</p> <p>2 the county jail, they're husbands and wives and grandpas</p> <p>3 and grandmas and kids and nephews and uncles, they're</p> <p>4 members of the public; correct?</p> <p>5 A They are members of the public, yes.</p> <p>6 Q I think what you're telling me, because I just</p> <p>7 said using unnecessary force against a member of the</p> <p>8 public in a jail is excessive force, and you said "I</p> <p>9 disagree with that." My follow-up question is: You're</p> <p>10 telling me your testimony in this case is that corrections</p> <p>11 officers can use unnecessary force against members of the</p> <p>12 public in the county jail and it's not excessive force;</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q Got it.</p> <p>16 Placing members of the community who are in</p> <p>17 handcuffs behind their back in a prone position is never</p> <p>18 an acceptable practice; agreed?</p> <p>19 MR. PREGON: Objection.</p> <p>20 Go ahead.</p> <p>21 A It's -- Obviously, again, like I explained, you</p> <p>22 have to have them facedown to put handcuffs on their back.</p> <p>23 It would be the interpretation of prone. Nose down,</p> <p>24 shoulders down. Again, you have to have them facedown for</p> <p style="text-align: right;">Page 88</p>
<p>1 A No, that's not true.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q So there are times -- your understanding is</p> <p>4 there are times when corrections officers can use force</p> <p>5 that is not reasonable but it's not excessive; right?</p> <p>6 A That is true.</p> <p>7 Q Force that is unnecessary is excessive?</p> <p>8 MR. PREGON: Objection.</p> <p>9 Go ahead.</p> <p>10 A No, that's not true.</p> <p>11 BY MR. DICELLO:</p> <p>12 Q So there are times based on your understanding</p> <p>13 that corrections officers can use force against the</p> <p>14 members of the public that isn't necessary, but it's not</p> <p>15 excessive; correct? I think that's what you just told me.</p> <p>16 A When you defer to -- I mean members of the</p> <p>17 public, you know.</p> <p>18 Q Well, that's who you're dealing with in the</p> <p>19 jail, aren't you?</p> <p>20 A They're -- They're incarcerated inmates. It's</p> <p>21 not, you know --</p> <p>22 Q They're not incarcerated. They're detained</p> <p>23 temporarily; right? You know the difference, don't you?</p> <p>24 A Can you reask the question?</p> <p style="text-align: right;">Page 87</p>	<p>1 a period of time to place -- place them in restraints. To</p> <p>2 hold them there or maintain that for an extended period of</p> <p>3 time or with force is -- would be a policy issue.</p> <p>4 Q So putting members of the community who are in</p> <p>5 restraints with their hands cuffed behind their back</p> <p>6 forcefully in prone positions for an extended period of</p> <p>7 time is an unacceptable practice; correct?</p> <p>8 A It would be, yes.</p> <p>9 Q It's prohibited, isn't it?</p> <p>10 MR. PREGON: Objection.</p> <p>11 Go ahead.</p> <p>12 A It would be -- As far as -- I'm trying to think</p> <p>13 of a different word to -- I mean, as far as prohibited.</p> <p>14 But it's -- it states in policy that, you know, it's not</p> <p>15 to be used.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q Well, it states it's prohibited, doesn't it,</p> <p>18 the policy?</p> <p>19 A Again, to know policy word-for-word, I'd have</p> <p>20 to refer to that. But we can go with prohibited.</p> <p>21 Q So let me get the answer in a question-answer</p> <p>22 format. Placing members of the community who have their</p> <p>23 hands cuffed behind their back in a prone position by</p> <p>24 force for an extended period of time is prohibited; true?</p> <p style="text-align: right;">Page 89</p>

<p>1 A And that would be in conjunction to -- That is</p> <p>2 a portion of the policy, and from my interpretation of</p> <p>3 that, that would be in conjunction to what would be</p> <p>4 considered a measure of restraints and in conjunction with</p> <p>5 what would be something referred to as hog-tying, where</p> <p>6 you're using a measure of restraints where you have their</p> <p>7 hands and their legs restrained and they're in a prone</p> <p>8 position. You know, as far as my understanding of the</p> <p>9 policy, the back portion of what you're reading me would</p> <p>10 be in conjunction with that.</p> <p>11 Q Mr. Richardson's arms and legs were restrained;</p> <p>12 correct?</p> <p>13 A They were.</p> <p>14 Q Let me get back to my question. Placing</p> <p>15 members of the community who have their hands cuffed</p> <p>16 behind their back forcefully in a prone position for an</p> <p>17 extended period of time is prohibited at the jail; agree</p> <p>18 or disagree?</p> <p>19 A Again, there's -- there's more to what you're</p> <p>20 -- it's more to the policy than that, my interpretation of</p> <p>21 that. But for long periods of time, yes, it is</p> <p>22 prohibited.</p> <p>23 Q So what's a long period of time?</p> <p>24 A That's left up to interpretation. Based on</p> <p style="text-align: right;">Page 90</p>	<p>1 MR. PREGON: Objection.</p> <p>2 Go ahead.</p> <p>3 A Yes.</p> <p>4 BY MR. DICELLO:</p> <p>5 Q Prone restraint includes physical or mechanical</p> <p>6 restraints; correct?</p> <p>7 MR. PREGON: Objection.</p> <p>8 Go ahead.</p> <p>9 A Not correct.</p> <p>10 BY MR. DICELLO:</p> <p>11 Q What's wrong about that statement?</p> <p>12 A Well, I mean, it's -- Again, it's -- it's</p> <p>13 working off of -- excuse me -- As it relates to my</p> <p>14 knowledge of the policy, it relates to mechanical</p> <p>15 restraints.</p> <p>16 Q Have you been trained or are you aware of a</p> <p>17 general rule in your field, Sergeant, that advises that an</p> <p>18 inmate or a detainee or somebody in custody is at an</p> <p>19 elevated risk of sudden death after a struggle that lasts</p> <p>20 three minutes?</p> <p>21 MR. PREGON: Objection.</p> <p>22 Go ahead.</p> <p>23 A As far as the timeframe, no. As far as, you</p> <p>24 know, three minutes. As far as a struggle, yes.</p> <p style="text-align: right;">Page 92</p>
<p>1 what's transpiring at the time.</p> <p>2 Q What's your interpretation?</p> <p>3 A It's -- It's situational. You know, it's -- if</p> <p>4 you had an ongoing -- you know, that's why it doesn't give</p> <p>5 a time, because it's situational. It's an assessment on</p> <p>6 what you're dealing with at that time. And then, again,</p> <p>7 to refer to, you know, what's objectionably reasonable.</p> <p>8 Q I have a definition of prone restraint here</p> <p>9 that I've been asking folks about. And you have to bear</p> <p>10 with me, because it's pretty wordy, okay? Prone restraint</p> <p>11 means all items or measures to limit or control the</p> <p>12 movement or normal functioning of any portion or all of an</p> <p>13 individual's body while the individual is in a facedown</p> <p>14 position for an extended period of time. Do you agree</p> <p>15 with that definition of prone restraint?</p> <p>16 MR. PREGON: Objection.</p> <p>17 Go ahead.</p> <p>18 A Can you read it to me one more time, please?</p> <p>19 BY MR. DICELLO:</p> <p>20 Q I can. All items or measures used to limit or</p> <p>21 control the movement or normal functioning of any portion</p> <p>22 or all of an individual's body while the individual is in</p> <p>23 a facedown position for an extended period of time. Do</p> <p>24 you agree with that definition of prone restraint?</p> <p style="text-align: right;">Page 91</p>	<p>1 BY MR. DICELLO:</p> <p>2 Q So what's your understanding of how long the</p> <p>3 struggle has to last until somebody is at an elevated risk</p> <p>4 of sudden death?</p> <p>5 A That would be, again, taking into account of --</p> <p>6 I mean, you don't know a person's true physical condition,</p> <p>7 you know, their health prior to dealing with them. So it</p> <p>8 could be -- it could be, you know, a matter of seconds or</p> <p>9 it could be a matter of minutes.</p> <p>10 Q So it sounds like you would want to error on</p> <p>11 the side of caution; right?</p> <p>12 MR. PREGON: Objection.</p> <p>13 A Ideally, that's the ultimate result, you know,</p> <p>14 you always want to, you know, the least amount.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q So given that you're aware of this concept that</p> <p>17 people are at elevated risks of sudden death after</p> <p>18 struggling with corrections officers and the time period</p> <p>19 at which point in time that risk elevates is unknown, I</p> <p>20 presume you want to error on the side of a shorter time</p> <p>21 period; right?</p> <p>22 A Yes.</p> <p>23 MR. PREGON: Objection.</p> <p>24 BY MR. DICELLO:</p> <p style="text-align: right;">Page 93</p>

<p>1 Q Corrections officers must never restrain</p> <p>2 members of the public in ways that pose an unnecessary</p> <p>3 risk of death. Do you agree with that?</p> <p>4 A I'd agree with that.</p> <p>5 Q And when faced with two or more ways to</p> <p>6 restrain a member of the public under the circumstances,</p> <p>7 corrections officers must choose the safer way; agreed?</p> <p>8 A In light of what's transpiring, it may be</p> <p>9 anyway. You know, there's that -- You know, again, you</p> <p>10 can't take into account, I mean, you have a fixed object,</p> <p>11 it's not moving, that's one thing. But you know --</p> <p>12 Q I understand. I think the question</p> <p>13 contemplates that when it says "faced with two or more</p> <p>14 ways to restrain someone." Let me try it this way: Faced</p> <p>15 with two or more reasonable ways to restrain someone, the</p> <p>16 officers must choose the safer way?</p> <p>17 A Perceptually, yes.</p> <p>18 Q Are you aware of research in your field that</p> <p>19 has shown that the prone restraint is a hazardous and</p> <p>20 potentially lethal restraint position?</p> <p>21 A As it relates to, again, the -- with the use of</p> <p>22 mechanical restraints and, like I referred to, hog-tying.</p> <p>23 That's the common term used where, you know, you're</p> <p>24 coupling hand restraints behind the back to leg shackles.</p> <p style="text-align: right;">Page 94</p>	<p>1 the prone restraint was a hazardous and potentially lethal</p> <p>2 restraint position; correct?</p> <p>3 A Yes.</p> <p>4 Q And when we're talking about mechanical</p> <p>5 restraints, Mr. Richardson was restrained with mechanical</p> <p>6 restraints; correct?</p> <p>7 A He was.</p> <p>8 Q He was also restrained with physical</p> <p>9 restraints; true?</p> <p>10 A That is true.</p> <p>11 Q Do you know whether or not the use of prone</p> <p>12 restraint is prohibited in the State of Ohio?</p> <p>13 A I do not.</p> <p>14 Q Do you think that the use of a prone restraint</p> <p>15 is permitted in the State of Ohio?</p> <p>16 A Yes. Again, as it relates to actually</p> <p>17 physically getting somebody handcuffed or put in</p> <p>18 mechanical restraints, there's a measure of time where a</p> <p>19 subject does have to be prone. So -- And again -- I'm</p> <p>20 sorry.</p> <p>21 Q That's okay. I think you're referring to a</p> <p>22 concept, if you've ever heard of it, called transitional</p> <p>23 hold. Have you ever heard of that concept?</p> <p>24 A I have not.</p> <p style="text-align: right;">Page 96</p>
<p>1 And then you're coupling them together.</p> <p>2 Q So you're aware of literature that says</p> <p>3 hog-tying can kill people; correct?</p> <p>4 A It elevates the risk of death, yes.</p> <p>5 Q Are you aware of research that shows that the</p> <p>6 prone restraint without hog-tying, just the prone</p> <p>7 restraint, is a hazardous and potentially lethal restraint</p> <p>8 position?</p> <p>9 A Not direct information, no.</p> <p>10 Q Are you aware of any indirect information in</p> <p>11 your field that has demonstrated that the prone restraint</p> <p>12 is a hazardous and potentially lethal position?</p> <p>13 A Yes.</p> <p>14 Q And so what information are you aware of?</p> <p>15 A It was just -- just common knowledge or -- or</p> <p>16 putting information together. Like if, you know, like</p> <p>17 hog-tying or being in a prone position, it does -- Let me</p> <p>18 -- If I can go back to your -- the first question. Having</p> <p>19 knowledge that a prone position can create, yes. And</p> <p>20 then, you know, just through not direct literature that</p> <p>21 I've read, but, you know, training and knowledge that's</p> <p>22 been provided to me.</p> <p>23 Q So based on the training and knowledge that's</p> <p>24 been provided to you as of May 19th, 2012, you knew that</p> <p style="text-align: right;">Page 95</p>	<p>1 Q Has anyone ever shared with you an executive</p> <p>2 order from the governor from the State of Ohio that dates</p> <p>3 back to 2009 and continues to be in force today that bans</p> <p>4 the use of prone restraint in the State of Ohio?</p> <p>5 A I'm not aware.</p> <p>6 Q Is that something that you think as a sergeant</p> <p>7 who is working in the jail in the State of Ohio that</p> <p>8 houses up to a thousand people in the community that you</p> <p>9 should be aware of?</p> <p>10 MR. PREGON: Objection.</p> <p>11 A Does that -- Does that directly relate to law</p> <p>12 enforcement and/or corrections or jail facilities?</p> <p>13 BY MR. DICELLO:</p> <p>14 Q It relates to the Ohio Department of Mental</p> <p>15 Retardation and Developmental Disabilities, the Ohio</p> <p>16 Department of Mental Health, the Ohio Department of</p> <p>17 Alcohol and Drug Addiction Services, the Ohio Department</p> <p>18 of Youth Services, the Ohio Department of Education, the</p> <p>19 Ohio Department of Job and Family Services, the Ohio</p> <p>20 Department of Health, the Ohio Department of Aging, the</p> <p>21 Ohio Department of Commerce, the Ohio Department of</p> <p>22 Natural Resources, the Ohio Department of Public Safety,</p> <p>23 the Ohio Department of Rehabilitation and Correction, the</p> <p>24 Ohio Department of Veteran Services, and the Ohio Board of</p> <p style="text-align: right;">Page 97</p>

<p>1 Regents. Do you think that an order from the governor 2 that addresses prone restraint that applies to all of 3 those state agencies, including the Department of 4 Rehabilitation and Correction, is something that you as a 5 sergeant at a jail in our community should be aware of? 6 MR. PREGON: Objection. 7 A Yeah, if there was such a -- you know, where 8 you actually have the order. 9 BY MR. DICELLO: 10 Q I mean, I'm showing you this order. This is 11 the first time you have ever seen it; right? 12 A That's correct. 13 Q And I'm the first person that's ever made you 14 aware of this order? 15 A That is correct. 16 Q Again, given your position where you're 17 supervising corrections officers who are putting people in 18 restraints on a day-to-day basis, do you think that this 19 is an order you should have been made aware of? 20 MR. PREGON: Objection. 21 A If it -- You know, not necessarily the 22 actual -- you know, it's executive order 2009 what, is 23 that, 13 Sam? 24 Q Yeah.</p> <p style="text-align: right;">Page 98</p>	<p>1 in that regard; correct? 2 MR. PREGON: Objection. He hasn't read the 3 order. 4 A I do not know if they're consistent. 5 BY MR. DICELLO: 6 Q To the extent that they both ban prone 7 restraint, they would be; true? 8 MR. PREGON: Objection. 9 A It's prohibited. Ban and prohibited can 10 perceptually be -- 11 Q Synonymous? 12 A Could be different. 13 Q Are you familiar with a general rule in 14 corrections or law enforcement that as soon as a suspect 15 or subject is handcuffed in the prone position that they 16 are to be taken off of his or her stomach as soon as 17 possible? 18 A Yes. 19 Q And why is that the rule? 20 A I wouldn't say a blanket rule, but as far as 21 Montgomery County Sheriff's Office, because of, again, 22 information that's been provided through training, is -- 23 would be considered -- or what I understand to be 24 positional asphyxia or something to that effect, that,</p> <p style="text-align: right;">Page 100</p>
<p>1 A 13 S as in Sam? 2 Q Yeah. 3 A Now, there may be portions of that, policy is 4 derived from -- that, you know, again, in relation to the 5 prone position. 6 Q This includes -- I mean under the title, this 7 includes a ban on prone restraints; right? 8 MR. PREGON: Objection. 9 A I didn't, you know, I haven't had a chance to 10 -- 11 BY MR. DICELLO: 12 Q Look at the title of it. Does it say 13 "including a ban on prone restraints"? 14 A It does notate that. 15 Q And the policies that we've been talking about 16 that are written down, you know, the policies that are 17 written down in the jail manual for Montgomery County, 18 those are consistent, those ban prone restraint, too, 19 because they say they're prohibited; correct? 20 MR. PREGON: Objection. 21 A Yes. 22 BY MR. DICELLO: 23 Q So the policies that are written down for the 24 jail and the order from the governor, those are consistent</p> <p style="text-align: right;">Page 99</p>	<p>1 again, you know, in light of, you know, an arrest, a 2 detention, something to that effect, there is a -- you 3 know, research has provided that there is an elevated 4 hazard or risk. And so, you know, when feasible or safe 5 to do so, as soon as possible, you know, to put them in a 6 position where they're not in a prone position or 7 facedown. 8 Q And that's the job of corrections officers to 9 follow that rule; correct? 10 A Yes. 11 Q And more globally, it's the job of the 12 Montgomery County Sheriff's Office to make sure that rule 13 is followed; correct? 14 A Yes. 15 Q What's your understanding of what positional 16 asphyxia is? 17 A Again, it would be in relation to a prone 18 facedown position, you know, with restraint and additional 19 leg restraint, you know, a combination of the both, you 20 know. And again, with a measure of force, because 21 generally, if you're in a position where you have to put 22 somebody in that particular state, if you ever had to do 23 so, there would be an elevated risk as far as safety 24 because that -- there would be additional -- they would be</p> <p style="text-align: right;">Page 101</p>

1 violent and combative. And so if you're going to that
 2 extent, there would be additional pressure where you would
 3 be, you know, again, holding them down and restraining
 4 them as a whole, not necessarily just, you know, from
 5 moving from side-to-side, but you would be holding them
 6 down to restrict their movement. So again, to not put
 7 themselves or put that person in that position, you know,
 8 they avoid hog-tying them.

9 **Q What is -- I appreciate you telling me about**
 10 **the positioning and the risk and all that. What is**
 11 **positional asphyxia, if you know?**

12 A I don't know a true definition of it other
 13 than, you know, being in a prone position, you know, with
 14 pressure on top of the person would create a risk, you
 15 know, or a hazard, you know, a medical condition.

16 **Q Do you know what asphyxiation is?**

17 A Not a true definition of it, other than --

18 **Q What's your understanding of what asphyxiation**
 19 **is?**

20 A It would be in relation to breathing, you know,
 21 it would be a restriction of breathing.

22 **Q Can people die from positional asphyxiation as**
 23 **far as you understand?**

24 MR. PREGON: Objection.

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1 A They can.

2 BY MR. DICELLO:

3 **Q I know you're not a medical person, but do you**
 4 **understand how it is that positioning somebody in a prone**
 5 **restraint causes asphyxiation?**

6 A I do not.

7 **Q Have you been trained on what the risk factors**
 8 **are for positional asphyxiation, meaning what's going to**
 9 **put a person at a higher risk of dying from positional**
 10 **asphyxiation? Have you received training in that?**

11 A Other than just the position itself.

12 **Q Okay.**

13 A And then --

14 **Q So are you aware of any other risk factors**
 15 **other than the position itself that places an individual**
 16 **at an increased risk of death from positional asphyxia?**

17 A No.

18 **Q When you were responding to Mr. Richardson, did**
 19 **you know whether or not he had a history of hypertension?**

20 A No, I knew nothing about the individual.

21 **Q Did you know whether or not he had a history of**
 22 **high blood pressure?**

23 A I did not.

24 **Q At any point in time during this encounter --**

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1 **And I think the video shows it's about 22 minutes long**
 2 **before Mr. Richardson is found to not be breathing. Is**
 3 **that consistent with your review of the video?**

4 A In close proximity, yes.

5 **Q So at any point in time during this 22-minute**
 6 **episode, did you instruct any corrections officers to sit**
 7 **Mr. Richardson up?**

8 A In a seated position?

9 **Q Yes.**

10 A No, I did not.

11 **Q Did you instruct any corrections officers to**
 12 **roll Mr. Richardson onto his back?**

13 A Not onto his back.

14 **Q And you didn't instruct any corrections**
 15 **officers to stand Mr. Richardson up; correct?**

16 A That is correct.

17 **Q The first time you instructed any corrections**
 18 **officers to roll Mr. Richardson onto his back was after he**
 19 **stopped breathing; correct?**

20 A I didn't instruct any officers to roll him onto
 21 his back.

22 **Q Officers rolled Mr. Richardson over onto his**
 23 **back once they realized he had stopped breathing; correct?**

24 A That is correct.

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1 **Q And they rolled him onto his back to try to**
 2 **give him the medical care he needed at that point; right?**

3 A Yes.

4 **Q Because that kind of care that he needed at**
 5 **that point couldn't be administered with him lying on his**
 6 **stomach; correct?**

7 A That would be correct. We -- I mean --

8 **Q Why wasn't Mr. Richardson rolled onto his back**
 9 **at any point in time during this 22-minute struggle?**

10 A Because then -- I don't know. He was rolled
 11 onto his side, which is part of the training. You know,
 12 at some point, you know, he was -- you know, he was,
 13 again, he was handcuffed, and then, you know, at the point
 14 where he could be safely, you know, restrained, you know,
 15 I had him rolled onto his side, which, you know, based on
 16 our training and understanding of, you know, again, we
 17 just -- I think we went through the whole protocol of, you
 18 know, prone, that, you know, it's in a safer position for
 19 him to be on his side.

20 **Q It is. And I think we can look at the video if**
 21 **we need to, Sergeant. But there are times Mr. Richardson**
 22 **is on his side, there are times that he's on his belly;**
 23 **correct?**

24 A That is correct.

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<p>1 Q So why wasn't Mr. Richardson rolled onto his</p> <p>2 back if you know that the prone position increases the</p> <p>3 risk of death?</p> <p>4 MR. PREGON: Objection.</p> <p>5 Go ahead.</p> <p>6 A Because he wasn't. I don't know. I didn't</p> <p>7 give that instruction. I can't -- You know, I can't</p> <p>8 recall why I did not.</p> <p>9 BY MR. DICELLO:</p> <p>10 Q Okay.</p> <p>11 A And it's not -- I mean, it's not necessarily,</p> <p>12 you know, my complete decision, you know. There's --</p> <p>13 Corrections officers are independent thinkers as well. So</p> <p>14 I'm not, you know, in total control and I don't instruct,</p> <p>15 you know, each movement.</p> <p>16 Q Some of these narrative reports will actually</p> <p>17 identify when they were put into the computer. Like it</p> <p>18 has a time reported on them.</p> <p>19 A Okay.</p> <p>20 Q And I was asking some other corrections</p> <p>21 officers here, and they were saying, "Yeah, that would be</p> <p>22 the time I basically finished typing this into the</p> <p>23 computer." But when I look at yours, when I look at your</p> <p>24 statement, your narrative, Sergeant Jackson, I don't see a</p> <p style="text-align: right;">Page 106</p>	<p>1 Q So it does indicate that the date reported was</p> <p>2 May 20th, 2012 at 9:17 a.m. Is that consistent with your</p> <p>3 recollection of when you typed this up?</p> <p>4 A That would be, yes, the next morning hours,</p> <p>5 yes.</p> <p>6 Q Why didn't you type this up the same day that</p> <p>7 the event occurred?</p> <p>8 A I departed the jail shortly after Dayton Fire</p> <p>9 responded to the jail. I had to respond to another</p> <p>10 critical incident.</p> <p>11 Q SWAT team?</p> <p>12 A Correct.</p> <p>13 Q I think Dusty Johnson told us that he saw you</p> <p>14 heading off to a SWAT call; is that right?</p> <p>15 A That is correct.</p> <p>16 Q Placing someone in restraints and holding them</p> <p>17 down on the ground is a use of force; true?</p> <p>18 A There's a measure of force used. But as far as</p> <p>19 use of force, you have to clarify.</p> <p>20 Q What I'm trying to figure out is we have a</p> <p>21 situation here where you've told us today that</p> <p>22 Mr. Richardson was placed on the ground, four officers</p> <p>23 participated in handcuffing him, because he was resisting;</p> <p>24 correct? That part is correct?</p> <p style="text-align: right;">Page 108</p>
<p>1 time. I see a reported time of 15:48, but I think that</p> <p>2 goes back to the time of the incident; correct?</p> <p>3 A That would be an approximate time of, you know,</p> <p>4 when the initially report was generated.</p> <p>5 Q Right. So I'm trying to get an understanding</p> <p>6 of when did you type this narrative up?</p> <p>7 A It was the following day.</p> <p>8 Q All right. And why isn't that documented, when</p> <p>9 you did this?</p> <p>10 A I don't know the particulars of the IT</p> <p>11 situation as far as the reporting. I apologize.</p> <p>12 Q That's okay.</p> <p>13 MR. PREGON: Just so the record is clear, the</p> <p>14 other statement I referred to on MC 1281?</p> <p>15 MR. DICELLO: Yeah.</p> <p>16 MR. PREGON: That one was time stamped.</p> <p>17 MR. DICELLO: Okay. So there is a difference</p> <p>18 in the formatting of these. Thanks for bringing that up.</p> <p>19 BY MR. DICELLO:</p> <p>20 Q Let's look at MC 1281. Are you there?</p> <p>21 A Yeah.</p> <p>22 Q It looks like this one is a little bit</p> <p>23 different format than the other one. Are you officer 266?</p> <p>24 A Yes, I am.</p> <p style="text-align: right;">Page 107</p>	<p>1 A Yeah. He was technically on the ground. But</p> <p>2 as far as placing him there, you know -- I mean, not from</p> <p>3 -- you know, he was rolled over and on the ground.</p> <p>4 Q I think you've told us that officers were</p> <p>5 holding his arms and legs to prevent him from moving;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q Handcuffs were put on Mr. Richardson to prevent</p> <p>9 him from getting up, in part; correct?</p> <p>10 A That is correct.</p> <p>11 Q One officer testified here yesterday that he</p> <p>12 was actually straddling Mr. Richardson to prevent him from</p> <p>13 moving, okay?</p> <p>14 A (Nods head.)</p> <p>15 Q And during this time, 22 minutes later, while</p> <p>16 the officers were doing these things, Mr. Richardson died;</p> <p>17 correct?</p> <p>18 MR. PREGON: Objection.</p> <p>19 Go ahead.</p> <p>20 A He did pass away, yes.</p> <p>21 BY MR. DICELLO:</p> <p>22 Q He stopped breathing while the officers still</p> <p>23 had their hands on him; correct?</p> <p>24 A Yes.</p> <p style="text-align: right;">Page 109</p>

<p>1 Q Are you telling me that nothing any of the</p> <p>2 corrections officers did on that day rose to the level of</p> <p>3 a use of force against Mr. Richardson?</p> <p>4 A As it relates to policy and a submission of a</p> <p>5 Use of Force Report, in addition to a standard Incident</p> <p>6 Report that documents their actions, it did not.</p> <p>7 Q Why not?</p> <p>8 A Because of actions on both parties. Again, the</p> <p>9 level of -- Excuse me. The level of his actions and our</p> <p>10 actions -- Again, if you, you know, within our policy.</p> <p>11 Again, it doesn't -- it doesn't notate, you know, and it</p> <p>12 can't, because all the situations, it will say, you know,</p> <p>13 your actions are this, and to do that, you know, but it</p> <p>14 doesn't notate, you know, if he's doing this you will --</p> <p>15 your action will be this, you know. And if he's doing</p> <p>16 this, then your action will be this. So there's a measure</p> <p>17 of discretion that's utilized in regards to the policy</p> <p>18 because of that. And so, you know, commonly, in the</p> <p>19 events that took place, it didn't rise to the level of an</p> <p>20 actual Use of Force Report coupling the standard Incident</p> <p>21 Report.</p> <p>22 Q Doesn't the policy read, "After an employee</p> <p>23 uses any type of force, he," should say he or she,</p> <p>24 "completes a Use of Force Report and submits it to his</p> <p style="text-align: right;">Page 110</p>	<p>1 Q And the policy that's written down, not</p> <p>2 necessarily what is done, but the policy that's written</p> <p>3 down says it doesn't matter if the suspect was injured or</p> <p>4 not, you still have to fill out a Use of Force Report;</p> <p>5 correct?</p> <p>6 A It does note that, yes.</p> <p>7 Q And the policy says that the employee is</p> <p>8 supposed to fill out that Use of Force Report before the</p> <p>9 end of his watch; correct?</p> <p>10 A That is correct.</p> <p>11 Q None of those things were done in this case;</p> <p>12 correct?</p> <p>13 A As it relates to me, it was not. It does also</p> <p>14 state in policy that it is a guideline, you know, so as</p> <p>15 far as where the discretion applies.</p> <p>16 Q Were you ever interviewed by any investigators?</p> <p>17 A I was not.</p> <p>18 Q Do you know who investigated this death?</p> <p>19 A I do not. As far as investigation, can you</p> <p>20 clarify that?</p> <p>21 Q Didn't somebody investigate how and why a</p> <p>22 28-year-old kid died in the jail?</p> <p>23 A There would be -- There would be a criminal</p> <p>24 investigation and an administrative review by our Internal</p> <p style="text-align: right;">Page 112</p>
<p>1 supervisor before the end of his watch. This requirement</p> <p>2 applies to all situations where an employee uses force</p> <p>3 despite the type of force and regardless of whether any</p> <p>4 injury is apparent." Isn't that the policy on Use of</p> <p>5 Force Reports?</p> <p>6 A It is. But to --</p> <p>7 Q So where's the discretion in there that you're</p> <p>8 talking about? I'm looking at -- this is Montgomery</p> <p>9 County Sheriff's Office, these are the General Orders that</p> <p>10 I saw, and I'm looking at the use of force portion that</p> <p>11 says written reports. And I just read section two. Just</p> <p>12 read that for me. Does that have anything about</p> <p>13 discretion of when to fill out a report or when not to?</p> <p>14 A Are you asking me to read it aloud?</p> <p>15 Q No, I just read it aloud. You can read it</p> <p>16 aloud again if you want. But this section here, J-2,</p> <p>17 doesn't say anything about discretion on when to fill out</p> <p>18 a Use of Force Report, does it?</p> <p>19 A It does not.</p> <p>20 Q And in fact the policy, the written policy, the</p> <p>21 one that's written down, actually says no matter what kind</p> <p>22 of force is used, you have to fill out a Use of Force</p> <p>23 Report; correct?</p> <p>24 A It does note that.</p> <p style="text-align: right;">Page 111</p>	<p>1 Affairs Division. So two separate investigations.</p> <p>2 Q Have you seen the criminal investigation?</p> <p>3 A I have not.</p> <p>4 Q I haven't seen it, either. Do you know who was</p> <p>5 responsible for the criminal investigation?</p> <p>6 A I do not.</p> <p>7 Q You took no part in it; correct?</p> <p>8 A I took no part in it, yes.</p> <p>9 Q And to the extent there was any criminal</p> <p>10 investigation, you were not even interviewed; correct?</p> <p>11 A Yeah. Well, can I go back to taking part in</p> <p>12 the investigation? I did submit a report, which could be</p> <p>13 part of an investigation.</p> <p>14 Q Sure. To the extent there was any criminal</p> <p>15 investigation, nobody ever interviewed you; correct?</p> <p>16 A No.</p> <p>17 Q Yes, that's correct?</p> <p>18 A That is correct.</p> <p>19 Q All right. Sometimes we do no no, and then we</p> <p>20 read it later and we don't know what we're saying.</p> <p>21 A Yes.</p> <p>22 Q Did you interview anybody in connection with</p> <p>23 this young man's death?</p> <p>24 A I did not.</p> <p style="text-align: right;">Page 113</p>

1 **Q** Were you present when Mr. Richardson was
2 declared deceased?
3 A I --
4 **Q** Looking at your narrative --
5 A I'd have to --
6 **Q** I know I'm testing you. Looking at your
7 narrative, you say, "A short time later, Inmate Richardson
8 was pronounced deceased by the Dayton Fire Department and
9 Dr. Ellis." Does that refresh your recollection that you
10 were present when that happened?
11 A It doesn't. Other than it may have been I had
12 knowledge of it and documented it.
13 **Q** Okay.
14 A Because if you look, it's kind of a general
15 documentation --
16 **Q** Yep.
17 A -- of, you know, just proceedings that took
18 place. So I do not recall if I was specifically there.
19 Because under my recollection, shortly after, I escorted
20 Dayton Fire medics personnel up to the housing location, I
21 know I departed shortly after. So I don't know how long I
22 -- scratch that. I do. Based on my report, I know that,
23 again, I instructed -- I do recall instructing Officer
24 Beach to stay with the body. So I believe I was there.

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1 **Q** Did you ever review a Risk Management Review
2 Report into the death of this young man?
3 A I did not.
4 **Q** Is that something that you typically wouldn't
5 review after you have witnessed and kind of presided over
6 a situation where someone died while in the custody of the
7 corrections officers?
8 A It would be -- No, it wouldn't be typical that
9 I review it.
10 **Q** So they don't typically -- When I say "they,"
11 I'm talking about the --
12 A Who submits the reports?
13 **Q** I'm talking about the sheriff's office, the
14 "they," okay? They don't give you these reports, do they?
15 A No. Like, Hey, this is just a copy of the, you
16 know, just for your review, no.
17 **Q** Did anyone ever come by and notify you to say,
18 we figured out how this happened or why it happened?
19 A After the fact, yes.
20 **Q** Who did that?
21 A I don't recall. It may have been -- may have
22 been the captain, may have been another sergeant.
23 **Q** What did that person tell you?
24 A That he ultimately died of a heart attack or

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1 something heart related. I can't say, you know, that it
2 was a heart attack or -- It was heart related.
3 **Q** Did they tell you how the heart attack
4 occurred?
5 A No.
6 **Q** This -- I'm looking at a Risk Management Review
7 Report. It starts at MC 1718. Have you ever seen that?
8 A I have not.
9 **Q** It's completed, it's signed off on by someone
10 by the name of Sergeant Tom Flanders. Do you see that?
11 A Yes, sir.
12 **Q** Sergeant Flanders later became Captain
13 Flanders; correct?
14 A That is correct.
15 **Q** Captain Flanders has been fired; correct?
16 MR. PREGON: Objection.
17 A He no longer works for the sheriff's office.
18 BY MR. DICELLO:
19 **Q** Captain Flanders was dismissed from working
20 from the sheriff's office in part because he took part in
21 racist text messages that went back and forth between
22 another sheriff's employee and himself; correct?
23 MR. PREGON: Objection.
24 And, Nick, if you give me a continuing on this

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1 line of questioning, I'll stop interrupting.
2 MR. DICELLO: Sure.
3 BY MR. DICELLO:
4 **Q** Right?
5 A Can you repeat the question, please?
6 **Q** Sergeant Flanders who later became a captain
7 within the Jail Division was terminated from his position
8 of employment at the Montgomery County Sheriff's Office
9 for taking part in racist text messages exchanged between
10 himself and another member of the sheriff's office;
11 correct?
12 A No. I can't say that that would be correct,
13 because I don't know if that was the actual reasoning for
14 his termination. I will say that he was involved in an
15 investigation. But I can't say that is why specifically
16 he was terminated.
17 **Q** Do you agree that racism demonstrates a bias
18 against certain kinds of people?
19 MR. PREGON: Objection.
20 Go ahead.
21 A Yes. That was a general question, not directly
22 related to a particular person?
23 BY MR. DICELLO:
24 **Q** It was.

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<p>1 A Okay.</p> <p>2 Q And I understand it was a general answer.</p> <p>3 Did you review -- At any point in time after</p> <p>4 Mr. Richardson's death but before the lawsuit was filed,</p> <p>5 did you review this incident report?</p> <p>6 A Other than my initially completing the report</p> <p>7 to ensure that, you know, it's what I perceived to be</p> <p>8 correct and accurate. After the fact, no.</p> <p>9 Q So if I understand your answer, you reviewed</p> <p>10 your narrative statement, but after the fact, after</p> <p>11 Mr. Richardson died, you didn't review the entire incident</p> <p>12 report; correct?</p> <p>13 A I have no recollection of like the entire,</p> <p>14 because through points in time, going through --</p> <p>15 ultimately we, as sergeants, have to sign off on, you</p> <p>16 know, all reports. So I may have been tasked, I don't</p> <p>17 know how much that Sergeant Lewis did, but I may have been</p> <p>18 tasked with going through and reading back through</p> <p>19 people's reports and, you know, some -- some corrective</p> <p>20 errors, you know, you know, spelling errors, you know, a</p> <p>21 comma here, things like that. But I'm sure at some point,</p> <p>22 I have no recollection of it, but just because I -- you</p> <p>23 know, I was involved in the incident, that I read every</p> <p>24 single report.</p> <p style="text-align: right;">Page 118</p>	<p>1 far as their mental health in relation to a critical</p> <p>2 incident, which, you know, it's just being a supervisor.</p> <p>3 And then just general -- just general conversation of how</p> <p>4 it played out, you know, just the chronicle order of</p> <p>5 things, just general conversations.</p> <p>6 Q Okay.</p> <p>7 A Who that was with and when it was, you know --</p> <p>8 Q I'm coming to the end here, Sergeant. I</p> <p>9 appreciate your patience. This is my only chance to ask</p> <p>10 you questions before trial, so I apologize if it's taking</p> <p>11 me longer than you had expected.</p> <p>12 Do you agree that the sheriff's office is</p> <p>13 obligated or it's the sheriff's office's job to train and</p> <p>14 instruct corrections officers in how to restrain people in</p> <p>15 a way that doesn't put them at an unnecessary risk of</p> <p>16 death?</p> <p>17 A Yes, I agree.</p> <p>18 Q Do you agree that the sheriff's office is</p> <p>19 required to instruct and train its corrections officers on</p> <p>20 the dangers of the positional asphyxia?</p> <p>21 A I agree.</p> <p>22 Q Do you agree that the sheriff's office,</p> <p>23 Montgomery County Sheriff's Office, is required to train</p> <p>24 and instruct its corrections officers on what positional</p> <p style="text-align: right;">Page 120</p>
<p>1 Q That's exactly what I was looking for.</p> <p>2 Did you recommend or suggest any retraining for</p> <p>3 any of the corrections officers that were involved in</p> <p>4 Mr. Richardson's death?</p> <p>5 A I did not.</p> <p>6 Q As far as you understood, the practices,</p> <p>7 customs, the procedures that you all were following in the</p> <p>8 jail, everything that all the corrections officers did in</p> <p>9 connection with Mr. Richardson was in accordance with</p> <p>10 those customs and practices at the jail; correct?</p> <p>11 A In addition to policy, yes.</p> <p>12 Q Have you had any discussions with Sergeant</p> <p>13 Lewis or any of the other corrections officers who were</p> <p>14 involved in this incident about what happened at any point</p> <p>15 in time?</p> <p>16 A After the fact, yes.</p> <p>17 Q Can you tell me what conversations you had and</p> <p>18 what you remember about those?</p> <p>19 A I have no recollection of the actual content of</p> <p>20 the conversation. Do you want a general answer? I mean,</p> <p>21 I can --</p> <p>22 Q Sure.</p> <p>23 A Just, you know, it would be more so of, you</p> <p>24 know, following up to make sure they're okay, you know, as</p> <p style="text-align: right;">Page 119</p>	<p>1 asphyxia is?</p> <p>2 A Yes.</p> <p>3 Q Do you agree that the Montgomery County</p> <p>4 Sheriff's Office is required to instruct and train its</p> <p>5 corrections officers about who is at risk of dying from</p> <p>6 positional asphyxia?</p> <p>7 A I agree.</p> <p>8 Q And same question. Do you agree that the</p> <p>9 Montgomery County Sheriff's Office is required to train</p> <p>10 and instruct corrections officers on what must be done to</p> <p>11 minimize the risk of death to -- as a result of positional</p> <p>12 asphyxia?</p> <p>13 A I agree.</p> <p>14 Q Did you become aware at some point in time that</p> <p>15 marijuana was found in Mr. Richardson's system?</p> <p>16 A I did.</p> <p>17 Q And did anyone ever inform you that based on</p> <p>18 the toxicology results, at least the coroner or somebody</p> <p>19 at the coroner's office was of the opinion that</p> <p>20 Mr. Richardson had ingested marijuana within six or so</p> <p>21 hours of his death?</p> <p>22 A I did not know that.</p> <p>23 Q Assuming that's what the records will show, do</p> <p>24 you understand how it is that Mr. Richardson was consuming</p> <p style="text-align: right;">Page 121</p>

<p>1 marijuana while he was detained at the Montgomery County 2 Jail? 3 A I do understand that. 4 Q Give me some insight into that. 5 A Just because it's a jail doesn't mean that -- 6 you know, there's many ways to, I would say, just in 7 simplest terms, smuggle drugs and narcotics into the 8 facility. And it is a common and ongoing problem in any 9 jail facility. And so it wouldn't be -- it wouldn't be 10 surprising or uncommon that he had had an opportunity to 11 ingest marijuana while incarcerated. Or while in jail, 12 let me clarify that. 13 Q Given that it's an ongoing problem and 14 challenge that you folks face, when you responded and 15 observed Mr. Richardson's incoherent behavior, did you 16 then have to consider that maybe he had ingested illicit 17 drugs or contraband? 18 A It was a thought process, yes. 19 Q I'm just going to review my notes real quickly. 20 I think I'm done. 21 (Pause in proceedings.) 22 BY MR. DICELLO: 23 Q I should have asked you about this one, too. I 24 showed you the use of force policy under the General</p> <p style="text-align: right;">Page 122</p>	<p>1 of Force Report is forwarded to the jail administrator via 2 the chain of command"; correct? 3 A That is correct. 4 Q "This requirement," I think it's referring to 5 the Use of Force Report and incident report. "This 6 requirement applies to all situations where an employee 7 uses force despite the type of force and regardless 8 whether an injury is apparent"; correct? 9 A That is correct. 10 Q The only documentation we have in this case is 11 an incident report; correct? 12 A Yes. 13 Q There are no Use of Force Reports; true? 14 A No, because it wasn't deemed that a Use of 15 Force Report needed to be submitted. And that's what that 16 is in direct relation to. 17 Q Doesn't this say after any type of force is 18 used a Use of Force Report has to be completed? 19 A Yeah, that's deemed a use of force. 20 Q So you're telling me that the interaction that 21 Mr. Richardson had with these officers in connection with 22 which he died was not a use of force? 23 A It was not considered a use of force. 24 Q Okay. Thanks.</p> <p style="text-align: right;">Page 124</p>
<p>1 Order. Do you remember we looked at that with respect to 2 completing reports? Use of Force Reports? 3 A Is that what you read to me? 4 Q Yeah. 5 A Okay. 6 Q I want to now show you what is MC 2986 and MC 7 2987, Sergeant. And this is the use of force policy from 8 the jail manual. 9 A Jail manual. 10 Q Correct? And it was revised prior to 11 Mr. Richardson's death; correct? 12 A That is correct. 13 Q So it's my understanding, when I requested 14 these policies, that the lawyers were kind enough to give 15 me a copy that was in place as of the time of 16 Mr. Richardson's death. And does it appear that's the 17 case to you by looking at revision date on this manual? 18 A That would be correct. 19 Q And then under use of force, section B-6, it 20 says, "After an employee uses any type of force, he 21 completes a Use of Force Report and submits it to his 22 supervisor before the end of the watch"; correct? 23 A That is correct. 24 Q And then it says, "The incident report and Use</p> <p style="text-align: right;">Page 123</p>	<p>1 A All right. 2 Q I appreciate your time. 3 MR. PREGON: We'll read. 4 --- 5 (Signature not waived.) 6 --- 7 And, thereupon, the deposition was concluded at 8 10:53 a.m. 9 --- 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">Page 125</p>

<div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div></div> <div><p>December 4, 2015</p><p>Dear Mr. Jackson,</p><p>You have chosen to read and sign your transcript. Please do not mark on the transcript. Any corrections/changes you may desire to make in your testimony should be typewritten or printed on the errata sheet at the end of testimony, giving the page number, line number and desired correction/change. After you have read the transcript, sign your name on the correction sheet and where indicated at the close of testimony before a notary public.</p><p>The Rules of Civil Procedure allow thirty days for you to read and sign. Please return the signature page and errata sheet to Whitney Layne, 6723 Cooperstone Drive, Dublin, Ohio 43017 within that time. Failure to do so in the allotted time will result in your transcript being used as though read and signed by you.</p><p>Sincerely,</p><p>_____ Whitney Layne Professional Reporter</p><p>Cc: Nick DiCello Carrie Starts Jamey Pregon</p><p>Page 126</p></div>	
<div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div></div> <div><p>State of _____</p><p>County of _____</p><p>I, TED JACKSON, do hereby certify that I have read the foregoing transcript of my deposition given on November 18, 2015; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.</p><p>_____ TED JACKSON</p><p>I do hereby certify that the foregoing transcript of the deposition of TED JACKSON was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the ____ day of _____, 2015.</p><p>_____ Notary Public</p><p>My Commission Expires on _____</p><p>- - -</p><p>Page 127</p></div>	

1 State of Ohio

2 County of Montgomery

3 I, TED JACKSON, do hereby certify that I have
4 read the foregoing transcript of my deposition given on
5 November 18, 2015; that together with the correction page
6 attached hereto noting changes in form or substance, if
7 any, it is true and correct.

8

SJD 1266

9

TED JACKSON

10 I do hereby certify that the foregoing transcript
11 of the deposition of TED JACKSON was submitted to the
12 witness for reading and signing; that after he had stated
13 to the undersigned Notary Public that he had read and
14 examined his deposition, he signed the same in my presence
15 on the 9th day of December, 2015.

16

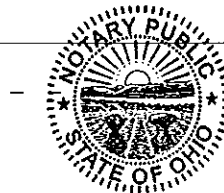
Tina C. Sabo

17

Notary Public

18 My Commission Expires on _____

19



TINA C. SABO
Notary Public, State of Ohio
My Comm. Expires April 27, 2016

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22

23

24

1 TO THE REPORTER:

2 I have read the entire transcript of my deposition taken
3 on the 18 day of November, 2015, or the same has been
4 read to me. I request that the following changes be
5 entered upon the record for the reasons indicated.

6

7 Page Line Correction and reason therefore

8 No CHANGES / CORRECTIONS

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23 Date 12/8/15 Signature SGT. [Signature] #266

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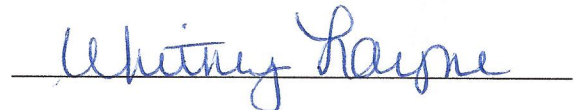
CERTIFICATE

State of Ohio :

County of Franklin:

I, Whitney Layne, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named TED JACKSON was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotype in the presence of said witness; afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified.

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Dublin, Ohio, on this 4th day of Decemer, 2015.



Whitney Layne, Notary Public

In and for the State of Ohio

My Commission expires May 4, 2020

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